

Ej. Suit No. 337 of 2011
CNR No. WBPS01-000504-2011

Order No: 82
10.06.2024

Today is fixed for hearing of petition u/o-39, rule-7 r/w Section 151 of the CPC filed by the defendant dtd.13.03.2024.

Written objection has been filed by the plaintiff on 29.04.2024 before this Court.

Both sides are present by filing their respective haziras.

Now in presence of both sides the petition u/o-39, rule-7 r/w Section 151 of the CPC filed by the defendant dtd. 13.03.2024 is taken up for hearing.

Heard learned Advocate for the defendant who submitted that the plaintiff has filed the instant suit against the defendant seeking a decree for recovery of possession in respect of the suit premises under the provision of West Bengal Premises Tenancy Act, 1997 and one of the grounds taken by the plaintiff for eviction of the defendant is the reasonable requirement of the suit premises for the use and occupation of the plaintiff on the ground of having insufficient accommodation in the suit building. But it is the specific contention of the defendant that the plaintiff has construction several rooms on the roof of the suit building and has also construction stair leading to the roof subsequent to the holding of the local inspection in the suit building on earlier occasion on the basis of application of the plaintiff. Therefore, it is specific claim of the defendant the extent of actual accommodation of the plaintiff has not been brought before this Court.

In the above premises, the defendant by resorting to the mode of holding local inspection over the suit premises desires to bring the actual picture of the extent of accommodation of the plaintiff in the suit building and hence the petition under Order-39, Rule-7 of CPC on the points specified in the petition itself.

The Ld. advocate for the plaintiff raised objection by saying that the points mentioned in the petition are not the matter of local inspection if the same is allowed same will prejudice the plaintiff as the defendant is trying to fish out evidence. It has been further submitted from the side of the plaintiff that holding the inspection over the points mentioned in the petition will not aid the Court to reach any effective adjudication with regard to the issues involved in the present suit. It was also submitted that inspection has already been held over the suit building by Advocate Commissioner which is sufficient enough for adjudication of the matter in dispute. Accordingly, the plaintiff has asked for rejection of the instant petition.

Heard both sides.

Perused the materials on record.

Considered.

This is suit for eviction and after careful perusal of the pleadings of the respective sides in the light of the instant petition, this Court comes to the finding that one of the grounds for eviction of the defendant is reasonable requirement of the suit premises by the plaintiff on account of having insufficient accommodation in the suit building and the said ground has been categorically disputed by the defendant in their written statement by stating that the plaintiff has more than sufficient accommodation in the suit building itself.

It is a matter of record that local inspection has already been held over the suit building with regard to the accommodation of the plaintiff and the defendant and the report has already been

submitted by the Ld. Advocate Commissioner but the defendant is now taking the specific plea that further construction has been made by the plaintiff after such inspection work and the plaintiff has admitted about making construction work in the suit building in the form of construction of stair case but not the rooms on the roof as alleged by the defendant.

Therefore, considering the above this Court is of the view that in order to bring the actual picture of the plaintiff's actual accommodation in the suit building, local inspection of the suit building on the points mentioned in the petition for local inspection is necessary. Moreover, by resorting to the above mode this Court would be in a better position to appreciate the matter in dispute by physical verification of the accommodation under the possession of the plaintiff. Moreover, the plaintiff will also not be prejudiced in any manner if the instant application be allowed.

In the circumstances the instant application for local inspection filed by the defendant under order 39 rule 7 of the Code of Civil Procedure read with section 151 of the Code of Civil Procedure is considered and allowed in part on contest.

Hence, it is,

ORDERED

that the instant application dated 13.03.2024 for local inspection filed by the defendant under order 39 rule 7 of the Code of Civil Procedure read with Section 151 of Code of Civil Procedure is considered and allowed on contest.

Be it noted that inspection has already been held once over the suit building by one Advocate Commissioner and he has submitted his report before this Court and as such in my opinion, it would be convenient and justified to appoint the said commissioner to reinspect the suit building as he would be in a better position to find out the additional construction, if any, at all, made by the plaintiff after inspection of the suit building on the earlier occasion.

Let Learned Advocate Smt. Indra Prasad Mallick of Presidency Small Cause Court be appointed as Learned advocate Commissioner for local inspection of the suit property as per points mentioned in the local inspection application.

Learned Advocate Commissioner is directed to cause service of notice upon both the parties before his commission work.

Learned advocate Commissioner is further directed to observe all legal formalities before starting his commission work.

Defendant is directed to pay Rs. 8,000/- (Eight thousands only) as commission fee to the learned advocate Commissioner by hand positively within 10 (ten) days from the date of this order and the defendant is directed to submit the receipt showing such payment.

Writ be issued in favour of the Ld. Advocate Commissioner on submission of the payment receipt.

Fixing **02.08.2024** for filing of Commissioner's report.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
(J.O. Code: 01148)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta