

EJECTION SUIT NO. 205 OF 2015

ORDER NO. 31 DATED 18.12.2018

Both parties file hazira.

Counsels for both parties are present on call.

The application of the defendants under Sec.151 C.P.C. dated 16.09.2016 for repairing of the suit property is taken up for hearing.

By filing the instant application, defendant has prayed for repairing of the certain portion of the suit premises without changing its nature and character as per schedule of the instant application on the ground, inter alia, that during the pendency of the suit, the suit property has been damaged due to natural wear and tear but the plaintiff has turned a deface to their request for such repairing.

Other side raised strong objection by filing written objection submitting, inter alia, that they have already taken a plea in para-19 of their pleadings that the defendants have done act contrary to the provisions of (m) (o) (p) of Sec.108 of Transfer of Property Act. Defendants have fixed wooden loft slabs of permanent nature damaging the walls of the suit premises which is changing the nature and character of the same.

Counsel for the plaintiff submits that when they have asserted the said act of negligence leading to the damage of the suit premises, defendant ought not be allowed to make repair by making a false and frivolous application.

Heard both sides. Perused the application, written objection, Commission Report as well as the materials available on record.

The Commission report is explicit that there are certain cracks and damage of the walls and floors of the suit building which he has termed as damaged. The pleadings of the plaintiff also alleges misconduct on the part of the defendant thereby damaging the suit property by fixing wooden lofts of permanent nature. The allegation of damage of

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walls and floors of the suit premises is apparent from the face of the pleadings of the plaintiffs.

I am of the view that the instant repairing application of the defendant is misconceived in nature and if allowed, will definitely be prejudicial to the interest of the plaintiff. Moreover, the estimated cost associated with such proposed repairing work is not clear.

Keeping in tune with the above observation, I am inclined to allow the instant application which, if allowed, will be detrimental to the instant suit.

The instant application under Sec.151 C.P.C. dated 16.09.2016 is thus rejected on contest but without any order as to cost.

Fix 21.01.2019 for framing of issues.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]