

Ej. Suit No. 336 of 2014

8/19.3.15

Today is fixed for passing order in respect of the petition preferred by the plaintiffs under order 39 rule 7 C.P.C. Both parties file hazira through their respective Id. Advocates.

In the subject application for inspection preferred by the plaintiffs under order 39 rule 7 read with section 151 C.P.C. on 22.8.14, they have stated to have instituted this suit against the defendants for their eviction from the suit premises and recovery of khas possession thereof, on the grounds of , inter alia, default in payment of rent and reasonable requirement faced by themselves and their family members. It has also been mentioned that the defendants have appeared in this suit and contesting the same.

The plaintiffs further contended that in order to appreciate the reasonable requirement and for administration of justice, it is necessary to appoint an advocate commissioner to inspect and record occupation of the plaintiffs as well as the defendants in the suit building. Accordingly, by way of this petition, the plaintiffs prayed for appointment of the advocate commissioner for inspection as per the points mentioned in the paragraph 3(a) and (b) thereof.

Copy of the petition served on the other side. In the written objection dt. 9.3.15, the contesting defendant no. 4 challenged the maintainability of the instant inspection application. It has been mentioned that the same is not properly signed and verified . The defendant further alleged that there is no disclosure of the provision of law under which the present application has been preferred. The defendant no. 4 further alleged that the subject application is merely an attempt to fish out evidence. He also denied the necessity of appointing an advocate commissioner for inspection of the accommodation of the parties.

Based on the said contentions, the defendant no. 4 prayed for rejection of the prayer made by the plaintiffs.

Ej. Suit No. 336 of 2014

Contd. Order no. 8/19.3.15

At the time of hearing Id.advocates for both sides reiterated the contents of their respective petition as well as the written objection.

Considered the submissions made and perused the materials on record including the subject application dt. 22.8.14 and written objection dt. 9.3.15.

It is observed that truly one of the grounds banked upon by the plaintiffs for getting the decree for eviction is that of reasonable requirement. The plaintiffs have categorically mentioned in their plaint the total strength of their family, requirement faced by them and the present accommodation under their possession.

Since one of the grounds relied upon in the plaint is that of reasonable requirement, so it is only but natural for the plaintiffs to try and present a clear and complete picture regarding the current accommodation of both parties. From that point of view the prayer for inspection appears to be justified.

It is further found that the petition is supported by an affidavit sworn by the plaintiff no. 1 and the caption discloses the application to have been preferred under order 39 rule 7 read with section 151 C.P.C. As such, I find that the objection raised by the defendant no. 4 on these counts are absolutely baseless and misconceived.

In view of above, I am of the considered opinion that for elucidation of the subject matter of the suit, for ascertaining the nature and condition of the suit premises, for getting a clear and complete picture regarding the present accommodation of the parties and for arriving at a better and more effective adjudication regarding the real points of controversies between the parties, an inspection is certainly required to be conducted.

In the result, the petition merits success.

Hence, it is

Ordered:

That the subject application preferred by the plaintiffs on 22.8.14 under order 39 rule 7 read with section 151 C.P.C. is allowed on contest without any order as to cost.

Ld. Advocate Smt. Soma Mukhopadhyay is hereby appointed as the inspection commissioner.

The plaintiffs are directed to pay a sum of Rs. 2500/- to the Inspection commissioner towards her fees and also furnish a copy of the subject application dt. 22.8.14 for facilitating her inspection work.

On the other hand, ld. Advocate commissioner is directed to visit suit locality for carrying on her commission work only after service of notices in advance to both parties as well as their respective ld. advocates.

She is further instructed to confine her report to the points mentioned in paragraph Nos. 3(a) and 3(b) of the instant application dt. 22.8.14.

Fix 21.4.15 for filing of document to show the payment of commission cost, writ will be issued thereafter.

Dictated & corrected by me :