

Ej. Suit No. 273 of 2023
CNR No. WBPS01-000571-2023

Order No: 09
10.04.2024

Today is fixed for hearing of the petition under Section 7(2) of WBPT Act, 1997 filed by the defendant and the petitioner Under Order-39, Rule-7 r/w section 151 of CPC filed by the plaintiff on 21.03.2024, written objection, if any, in the meantime.

No written objection against the application u/o-39, rule-7 of CPC on behalf of the defendant.

Defendant files a petition for adjournment for hearing of application u/s 7(2) of the WBPT Act, 1997. Copy served upon the other side.

Both sides are present by filing their respective haziras.

Heard.

Considered.

Prayer for adjournment is allowed for hearing of the petition u/s 7(2) of the WBPT Act, 1997 on the next date positively.

Now in presence of both sides the petition u/o-39, rule-7 r/w Section 151 of the CPC filed by the plaintiff dtd. 21.03.2024 as filed by the plaintiff is taken up for hearing as the Ld. Advocate for the defendant submitted that he will proceed with the hearing by raising oral objection.

Heard learned Advocate for the plaintiff who submitted that in order to ascertain the actual picture of the suit premises and also to ascertain the accommodation of the plaintiff available in the suit building and also to inspect of the defendant's occupation therein local inspection is required to be held in the suit building for the purpose of establish the ground of reasonable requirement. Learned Advocate further submitted that the defendant will not be prejudiced in any manner if the petition is allowed. It has been specifically submitted by the Ld. Advocate for the plaintiff that this is a suit for eviction wherein the ground of reasonable requirement has been set forth by the plaintiff and to bring the actual pen picture of the suit property the plaintiff has filed the instant petition on the points specified in the petition itself.

The Ld. advocate for the defendant 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 defendant as the plaintiff is trying to fish out evidence. Accordingly, the Ld. Advocate for the defendant prays for passing necessary order.

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 tenanted premises and the factum of such requirement has been categorically depicted in the plaint.

Though, the defendant has stated that holding inspection has been made for the purpose of ascertaining the ground of reasonable requirement which has been mentioned by the plaintiff in his application but on perusal of the points for inspection as per the schedule of the said application, I find that the question of collection of evidence cannot arise if the petition is allowed on the basis of those points.

Therefore, in my considered view, in order to bring the actual picture of the plaintiff's accommodation as well as the defendant's accommodation local inspection of the suit holding 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 and the defendant as well. Moreso, the defendant will also not be prejudiced in any manner if the instant application be allowed.

However, at the same time it is necessary to mention here in this context that it is settled position of law that the purpose of holding local inspection is only to assist the Court to arrive at conclusion but not to procure evidence in support of the party asking for it. The Ld. Advocate Commissioner is to take note of the above position while conducting the inspection work.

In the circumstances the instant application for local inspection filed by the plaintiff 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 on contest.

Hence, it is,

ORDERED

That the instant application dated 21.03.2024 for local inspection filed by the plaintiff 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.

Let Learned Advocate Swarup Kumar Ghosh 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.

Plaintiff is directed to pay Rs. 10,000/- (Ten thousand only) as commission fee to the learned advocate Commissioner by hand positively within 10 (ten) days from the date of this order and Ld. Advocate for the plaintiff 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 **04.06.2024** for hearing of the petition u/s 7(2) of the WBPT Act, 1997 positively and 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**