

EJECTMENT SUIT NO. 235 OF 2017  
C. N. R. NO. WBPS01- 000607 - 2017  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 51 DATED 05.12.2025

Both parties have filed hazira.

Today is fixed for passing order in respect of all the petitions filed by the defendant.

At the very outset, it appears that there is no receipt filed in this suit showing compliance of order no.49 dated 24.09.2025.

Defendant is directed to pay the cost of Rs.5000/- positively on or by the next date fixed.

Defendant had filed three petitions, one under Sec.151 of C.P.C. praying for recording 'Objection' of the defendant against the report, reject/set aside and expunge the Commissioner's report, one petition under Or.39 R.7 of C.P.C. praying for appointment of an Advocate Commissioner for holding local inspection afresh and another petition praying for taking off the suit from P. Board and to fix a date for hearing of the petitions filed by him on 04.11.2025.

Ld. Advocates for both sides are present.

Ld. Advocate for the plaintiff submits that he will not file any written objections against the said petitions and the records may be taken up for hearing on the date of filing itself as he will raise oral objections against the said applications filed by the defendant.

By filing one petition, it is stated by the defendant that it is fixed for evidence of the defendant and as he has filed two petitions today and as such, he has prayed for taking the suit off from the P. Hearing board.

Considering the submissions of ld. Advocates for both sides, I find that as the ld. Advocates for both sides are ready to hear the petitions filed by the defendant today itself, the petition for taking off the suit from P. Hearing board has got no legs to stand upon and the same is hereby rejected. Petitions were heard on the same date.

So, the record is taken up for passing of order in respect of the petitions filed by the defendant today.

By filing the petition under Sec.151 of C.P.C., it is submitted by the ld. Advocate for the defendant that an Advocate namely Sri Dipak Kumar Das was appointed as Commissioner for holding local inspection of the suit building and local inspection of the suit building was held on several dates and report was submitted on 19.02.2024 and exhibited as Exhibit No.9. He was cross examined. Ld. Advocate Commissioner was

EJECTION SUIT NO. 235 OF 2017  
C. N. R. NO. WBPS01- 000607 - 2017  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 51 contd.

fully biased and held commission work beyond the ambit of the order passed by this Id. Court appointing him as an Advocate Commissioner. Ld. Commissioner has omitted to incorporate three more rooms in his report which are in possession of plaintiff and her family. Ld. Advocate Commissioner gave his finding as to structural stability of the suit building. The final report is not in commensurate with the field notes and thus prayed for expunging the report of the Id. Advocate Commissioner dated 19.02.2024 [Exhibit No.9] and appointment of an Advocate Commissioner afresh.

On the other hand, it is submitted by the Id. Advocate for the plaintiff that the instant petition filed by the defendant is an after thought only to drag the disposal of the instant suit. Moreover, both parties as well as their respective Id. Advocates were present at the time of holding local inspection and put their signatures in the field note. So, at this stage, defendant can neither record their objection nor pray for rejection and/or set aside the said Commission Report and accordingly, the petition under Sec.151 of C.P.C. filed by the defendant today should be rejected in limini.

Heard Ld. Advocates for both sides. Considered.

It reveals from the record that Ld. Advocate Commissioner namely Sri Dipak Kumar Das was examined before the Court as P.W.2 and was also cross examined by Ld. Advocate for the defendant at length. The Commissioner's report was marked Exhibit 9 Collectively. No objection was raised by Ld. Advocate for the defendant at the time of exhibiting the same. Once a report has been accepted and marked Exhibit without any objection raised by Ld. Advocate for the defendant, there is no provision in law to expunge the same. The prayer made by the defendant in his application itself is beyond the purview of any law. In course of cross examination of P.W.2, it has been admitted on behalf of the defendant that the Inspection was held in presence of Ld. Advocates for both sides and the parties themselves. Had there been any cause to raise objection, defendant had the opportunity to file his written objection against the Commissioner's report till it was marked Exhibit in course of evidence of Ld. Commissioner. Moreover, defendant has cross examined Ld. Commissioner at length to establish his objection against the same. At this stage there is no scope to expunge the Commissioner's report and his evidence.

Furthermore the defendant has made two prayers in a single petition, one to expunge the Commissioner's report and another to appoint Commissioner afresh. This is

EJECTION SUIT NO. 235 OF 2017  
C. N. R. NO. WBPS01- 000607 - 2017  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 51 contd.

specifically barred by the Civil Rules and Orders framed by the Hon'ble High Court at Calcutta. According to Rule 20 of the Civil Rules and Orders framed by the Hon'ble High Court at Calcutta, "(2) Applications in regard to distinct subject-matters shall be made in separate petitions.

(3) A petition must not contain more than one prayer or one series of alternative prayers of the same kind."

On one score the defendant prays for recording "objection" of the defendant against the report and on the other hand prays for rejecting / setting aside and expunge the Commissioner's report dated 19.02.2024 and that too in a single sentence. These are for all practical purposes two separate prayers sought for by the defendant in a single application. The two prayers are completely opposite to each other and inconsistent with each other. Thus the petition is not maintainable even on that ground.

Accordingly the petition filed by the defendant is devoid of any merit and the same is liable to be rejected.

Hence, it is

**ORDERED**

that the petition dated 04.11.2025 filed by the defendant under Sec.151 of C.P.C. is hereby rejected but without costs.

By filing another petition under Or.39 R.7 read with Sec.151 of C.P.C., it is stated by the defendant that one Id. Advocate Commissioner namely Sri Dipak Kumar Das was appointed for holding local inspection at the behest of the plaintiff. He held local inspection and the report submitted by the said Id. Advocate Commissioner was prepared being provoked at the instigation of the plaintiff and the said report does not show the real picture in respect of the accommodation available to the parties to this suit. In view of the above, it is necessary to appoint an independent Advocate Commissioner for holding inspection/re inspection of the portions in occupation of both the plaintiff and the defendant at premises no.53, Pathuriaghat Street

On the other hand, it is submitted by the Id. Advocate for the plaintiff that the instant petition should be followed by the petition under Sec.151 of C.P.C. and if the said petition under Sec.151 of C.P.C. does not lie, the instant petition will also be given a go bye and as such, prayed for rejection of the instant petition.

Heard Ld. Advocates for both sides. Considered.

EJECTMENT SUIT NO. 235 OF 2017  
C. N. R. NO. WBPS01- 000607 - 2017  
Before Smt. A. Bhattacharya, Ld. Judge, 5<sup>th</sup> Bench.

ORDER NO. 51 contd.

The points on which the defendant have already been dealt with by Ld. Advocate Commissioner who was previously appointed by the Court. His report has already been accepted and the same has been marked Exhibit. He has also been examined and cross examined by the defendant at length. The suit has been filed by the defendant on various grounds, one of which is reasonable requirement. It is the plaintiff who has to prove her reasonable requirement and holding of local inspection being one of the pieces of evidence. It is primarily the duty of the plaintiff to prove his case. Only if the plaintiff proves his case, then It is not the duty of the defendant to disprove the case of the plaintiff by holding local inspection. Even if so, the defendant cannot use the mechanism of the Court to collect evidence to disprove the case of the plaintiff. Defendant must adduce independent evidence to disprove the case of the plaintiff. The defendant has had the opportunity to cross examine Ld. Advocate Commissioner to disprove the case of the plaintiff with regard to resonable requirement. Thus defendant cannot be permitted to collect evidence to prove his defense by appointment of advocate Commissioner.

Hence, it is

**ORDERED**

that the petition under Order 39 Rule 7 of CPC filed by the defendant on 04.11.2025 is hereby rejected but without costs.

Fix 05.01.2026 for evidence of DW's and filing of receipt showing payment of cost of Rs.5000/- by the defendant.

Dictated and corrected by me,

JUDGE

JUDGE  
[5TH BENCH]