

Ej. Suit No. 137 of 2021
CNR No. WBPS01-000271-2021

Order No: 15
18.07.2023

Today is fixed for hearing of petition u/o-39, rule-7 r/w Section 151 of the CPC filed by the plaintiff dtd. 09.02.2023.

Written objection has been filed by the defendant on 26.04.2023.

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 plaintiff dtd. 09.02.2023 as filed by the plaintiff as taken up for hearing.

Heard learned Advocate for the plaintiff who submitted that in order to ascertain the accommodation of the plaintiffs and also to bring the actual picture of the suit premises local inspection is required to be held in the suit premises situated at 64/1, Premchand Boral Street, Kolkata – 700012. 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 plaintiffs 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 plaintiffs are trying to fish out evidence. It has been further submitted from the side of the defendant that the plaintiffs have another accommodation at premises no. 61/2, Prem Chand Boral Street, Kolkata – 700012 which has not been disclosed by them and the defendant desires to bring that non-suit premises under inspection work for effective adjudication of the matter in dispute. Accordingly, the Ld. Advocate for the defendant prays for passing necessary order. The Ld. Advocate for the plaintiffs verbally submits before this Court that he has no objection if inspection work is being held over the above non-suit premises though he denies to have any accommodation there.

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.

Therefore, in my considered view, in order to bring the actual picture of the suit property, local inspection of the tenanted premises 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. Moreover, the defendant will also not be prejudiced in any manner if the instant application be allowed.

It is further noticed that the defendant has mentioned about another non-suit premises wherein the plaintiff allegedly have there alternative accommodation and in my considered view that the above non-suit premises must also be brought under the inspection work for appropriate adjudication of the matter in dispute as prayed for by the defendant but certainly at the cost of the defendant as the plaintiffs have denied about the existence of any such accommodation.

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 plaintiffs 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 09.02.2023 for local inspection filed by the plaintiffs 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 Smt. Srabani 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.

The Ld. Advocate Commissioner is further directed to hold inspection over non-suit premises no. 61/2, Prem Chand Boral Street, Kolkata – 700012 and to inspect and measure the number of rooms under the accommodation of the plaintiffs in the said premises, if any, and to specify the mode of user of the same along with specifying the other local feature relevant for the purpose of such inspection.

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 and the defendant are directed to pay **Rs. 12,000/- (Twelve thousand only)** as commission fee to the learned advocate Commissioner in equal share (**Rs. 6000/- each**) by hand positively within 10 (ten) days from the date of this order and Ld. Advocate Commissioner 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 **29.08.2023** 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