

EJECTMENT SUIT NO :- 462 OF 2009
(CNR No. WBPS01-001042-2009)
(JO CODE No. WB01229)

Order no. - 112
Dt. 12.09.2023

Today is fixed for hearing of the petition dated 23.08.2017.

Both sides file hazira.

Ld. Advocate Commissioner is present.

The case record is taken up for hearing of petition dated 23.08.2017 filed by the plaintiffs.

Heard Ld. Advocate for the plaintiffs who submitted that this Court was pleased to allow the application under order 39 Rule 7 of CPC for inspection of the suit premises in respect of point nos. 4(i), 4(ii) and 4(vi) as stated in the petition and he further submitted that on 30th June, 2017 when the Ld. Commissioner was inspected room no. 1, then the Ld. Commissioner noted down the articles lying in the suit room and Ld. Commissioner was acted illegally and was not authorised to take measurement and to note the articles lying in the said rooms and the plaintiffs requested the Ld. Commissioner to do commission work as per the writ and the Ld. Commissioner disobeyed the order of the Ld. Court and the Ld. Commissioner has submitted his report along with field note which should be cancelled and prayed for given direction to the Commissioner to inspect the suit premises afresh and submitted a fresh report in terms of the 4(i), 4(ii) and 4(vi).

Heard Ld. Advocate Commissioner who by filing written objection dated 24.07.2017 submitted before this court that after receiving the writ of commission, the Ld. Advocate Commissioner started to commission work from the plaintiff's accommodation but during the time of commission, the plaintiffs restrained the Ld. Advocate Commissioner to access the accommodation of the plaintiffs as such the Ld. Advocate Commissioner unable to inspect the room of the plaintiffs and he requested the plaintiffs to cooperate with him but the plaintiffs refused to do so and he has no other alternative noted all the statements in his field note and submitted report accordingly and as per prayer of him, this Court was pleased to direct him to inspect as per the points and stated in the application under Order 39 Rule 7 of the CPC filed

by the plaintiffs and the points no. 4(i), the plaintiffs seek to inspect the report of the present position and accommodation of the plaintiffs and as such the Ld. Advocate Commissioner intend to inspect the plaintiffs' accommodation as well as defendant's accommodation of each room to comply the order of the Court and he has not acted beyond his jurisdiction and submitted his report and he submitted that his report should be accepted by this Court and prayed for passing necessary order.

Heard Ld. Advocate for the defendant who submitted that Ld. Advocate Commissioner has submitted his report according to due process of law and plaintiffs did not allow the Ld. Advocate Commissioner to inspect the commission work over the suit building regarding plaintiffs' accommodation and as such the Ld. Advocate Commissioner submitted his report without proper inspection of the accommodation available to the plaintiffs over the suit building and hence prayed before this Court that the Court may pass necessary order in this respect.

Considered. Perused the instant petition and other materials on record.

On perusal of the same, it appears that plaintiffs have filed an application under Order 39 Rule 7 of CPC which was allowed by this Court and Ld. Advocate Commissioner was appointed for holding local inspection on the point nos. 4(i), 4(ii) and 4(vi) as mentioned in the petition under Order 39 Rule 7 of CPC.

It also appears from the record that vide. order no. 54 dated 10.01.2017 this Court has given direction to the Ld. Commissioner to submit report regarding possession of accommodation and there was no need for mentioning of articles found in the accommodation.

It also appears that Ld. Advocate Commissioner has submitted his report and in his report, he mentioned that plaintiffs' accommodation as stated by the plaintiffs situates at the 1st floor, 4th floor, 5th floor and 6th floor of the suit building at premises no. 19, Tarachand Dutta Street, P. S. - Jorasanko, Kolkata – 700073 and after inspecting room no. 1 in the 1st floor he was restrained by the plaintiffs for doing commission work and as such he could not inspect the total accommodation available to the plaintiffs in respect of the suit building.

Considering the materials on record and after hearing the submission of both sides, it is apparently clear that Ld. Commissioner has not inspected the total

accommodation available for the plaintiffs over the suit building and has submitted his report without mentioning the total accommodation of the plaintiffs over the suit building.

Accordingly, Ld. Advocate Commissioner is hereby directed to inspect the total accommodation available to the plaintiffs as mentioned in his first report over the suit building being no. 19, Tarachand Dutta Street, P. S. - Jorasanko, Kolkata – 700073 in respect of the 1st floor, 4th floor, 5th floor and 6th floor and submitted report thereon.

Plaintiffs are hereby directed to cooperate with the Ld. Advocate Commissioner.

Department is directed to issue fresh writ in respect of the 1st floor, 4th floor, 5th floor and 6th floor of the suit building being no. 19, Tarachand Dutta Street, P. S. - Jorasanko, Kolkata – 700073 which are accommodation of the plaintiffs.

Plaintiffs are hereby directed to deposit the cost of Rs.5,000/- to the Ld. Commissioner within ten days from the date of this order and to file receipt thereof.

After filing of the receipt of payment of cost of commissioner, fresh writ will be issued immediately and Ld. Commissioner is directed to hold the commission work according to the writ without granting any type of adjournment and to note the features as indicated by the plaintiffs and the defendant and to submit the report according to the schedule of the writ within the date fixed.

To 11.12.2023 for commission report.

[Dictated and corrected by me]

Sd/-
(Manabendra Nath Ghosh)
Judge, Bench – II,
Presidency Small Cause Court,
Calcutta.

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