

**Ej. Suit No. 477 of 2012**  
**CNR No. WBPS01-001068-2012**

**Order No: 68**  
**04.03.2024**

Today is fixed for P. Hearing of the suit.

Both sides are present by filing their respective haziras.

The defendant has filed a petition for taking off the matter from P. Board as he has filed two separate petitions u/o-39, rule-7 of CPC and u/s 151 of CPC respectively and prays for hearing of the same.

The petition for taking off the matter from P. Board is allowed subject to payment of Cost of Rs. 1000/- for filing the above two petitions after the matter has reached the peremptory hearing.

By filing the petition u/s 151 of CPC dated 04.03.2024 the defendant has prayed for passing necessary order permitting him to repair the tenanted premises by alleging about it's dilapidated condition which is also accompanied by a petition u/O-39, Rule-7 of CPC for holding local inspection in the tenanted premises.

Since the above two petitions have been filed for effecting repairing work of the suit premises, this Court find it's appropriate to take up the petition u/O-39, Rule-7 of CPC for hearing in presence of both sides.

Heard learned Advocate for the defendant who submitted that the tenanted premises is lying in dilapidated and precarious condition which needs immediate repairing and in order to bring the picture of the present condition of the tenanted premises and in order to justify the need for repairing of the tenanted premises, local inspection is required to be held in the suit premises. Learned Advocate further submitted that the plaintiff will not be prejudiced in any manner if the petition is allowed.

The Ld. advocate for the plaintiff raised objection by saying that the instant petition has been filed only with intent to delay the case which it has already reached evidence stage and accordingly the plaintiff has prayed for rejection of said application.

Heard both sides.

Perused the materials on record.

Considered.

This is suit for eviction and the status of the defendant is admittedly of tenant and untill and unless the tenant is evicted from the premises concerned, he has every right to reside in the premises without any harm being caused to him or his family member. It is this specific contention of the defendant-tenant that his tenanted occupation needs immediate repairing as the same has become inhabitable due to damage and the present condition of the suit premises can only be brought before this Court by way of local inspection in order to ascertain the need for it's repairing, as prayed for by the defendant-tenant.

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 for deciding the merit of the application for repairing filed u/s 151 of CPC. 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 defendant. Moreso, the plaintiff will also not be prejudiced in any manner if the instant application be allowed.

In the circumstances the instant application for local inspection filed by the defendant 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 04.03.2024 for local inspection filed by the defendant under order 39 rule 7 of the Code of Civil Procedure of the Code of Civil Procedure is considered and allowed on contest.

Let Learned Advocate Soumi Mukhopadhyay 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.

Defendant 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 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. The hearing of the application u/s 151 of CPC praying for order of repairing work is kept in abeyance till the receipt of the report of the Ld. Advocate Commissioner.

Since the fate of the hearing of the application for repairing u/s 151 of CPC as filed by the defendant has no nexus with the merit of the instant case, I find no justification to withhold the peremptory hearing of the instant suit till the receipt of the report of the Ld. Advocate Commissioner or till the disposal of the application u/s 151 of CPC praying for repairing work.

Fixing **03.05.2024** for filing of Commissioner's report and payment of cost of Rs. 1000/- as imposed and peremptory hearing.

**Dictated and corrected by me:**

*Judge*

**Smt. Sudipa Banerjee**  
**(J.O. Code: 01148)**  
**Judge, 3<sup>rd</sup> Bench**  
**Presidency Small Cause Court,**  
**Calcutta**