

Ej. Suit No. 456 of 2017
CNR No. WBPS01-001157-2017

Order No. 39
30.04.2024

Today is fixed for hearing of petition under Section 151 of CPC filed by the defendant dtd. 28.11.2023.

Written objection has already been filed by the plaintiff against the said application.

Both sides have filed hazira.

Heard Ld. advocates for both sides.

Perused the petition and other materials on record.

Defendant has prayed for an order for restoration of water supply from the existing pump through the suction pipe from the existing reservoir or erecting another reservoir which has been broken down by the plaintiff.

It has been the specific version of the defendant-tenant that the defendant is occupying the entire second floor of the suit building as a tenant at monthly rent of Rs. 45/- and the defendant has been residing there since more than 66 years and they have been getting water from a reservoir situated in the ground floor of the suit building under the control and supervision of the plaintiff. It is further stated that the defendant has been getting water from the said open reservoir through a pump installed by the defendant with the consent of the plaintiff which has been broken down by the plaintiff on 21.06.2023 with malicious intention in order to deprive the defendant from getting water therefrom.

In the above situation, the defendant submits that he has been facing extreme inconvenience and hardship in getting the water in his tenanted premises from the existing reservoir of the plaintiff-landlord in absence of getting access to the said reservoir with the suction pump of his own and hence he has prayed for restoration of water supply from the existing pump through the suction pipe from the existing reservoir or erecting another reservoir which has been broken down by the plaintiff.

The plaintiff-landlord has raised vehement objection by stating that the instant petition is absolutely baseless and malafide as the defendant is getting water access like the other tenants of the suit building and the water tank from which the defendant used to take water earlier has been broken down as per the direction of the Kolkata Municipal Corporation as the same was acting as the source of spread of Dengue and Malaria in the locality due to accumulation of water in open condition.

It is further stated by the plaintiff that the defendant illegally installed a suction pump in the said reservoir without the consent of the plaintiff against which several complaints have been lodged.

Before plunging into the merit of the instant application, it is important to note that this is a suit for eviction of tenant under the WBPT Act, 1997 and the status of the defendant is of a 'tenant' in respect of the suit property until and unless the decree of eviction, if any, at all, is passed against him. Therefore, the defendant at present is having every right to stay in the suit property peacefully and without fear of any injury not only to his right of tenancy but also

to his life and the life of the persons dwelling with him. This Court is not also unmindful of the fact that getting supply to water in the tenanted premises is the basic necessity which can never be hampered at the whims of the landlord.

However, on perusal of the application of the defendant-tenant it is found that it is not the case of the tenant that he is not getting access to the water supply in the suit building but admittedly he is getting access to one of the open reservoir of the landlord situated in the ground floor of the suit building from where he is getting regular supply of water. Here, the only allegation against the landlord is that he is not allowing the defendant-tenant to get access to the reservoir of the plaintiff by way of installation of the suction pump of the defendant-tenant. However, not even a single document either in the form of any agreement or otherwise has come before this Court from where it can be found that the tenancy right of the defendant also included the right of getting access water in his tenanted premises by installation of any separate suction pump as has been claimed by the defendant.

Moreover, regarding the fact of demolition of the existing reservoir of the landlord, it is found that KMC had already issued notice to the owner of the suit building from not accumulating water in the open tank situated in the suit building so as to prevent the spread of disease like dengue, malaria etc. resulting from storing stagnant water.

Therefore, taking into consideration the above facts and circumstances this Court comes to the finding that the access of water to the defendant-tenant has never been denied by the landlord and no satisfactory material has been placed before this Court by the tenant showing his entitlement to get access to such water by installation of his own suction pump as prayed for.

As such, in my considered view the the defendant-tenant has not been able to make out a sufficient case to get the order of installation of suction pump in the existing reservoir of the plaintiff-landlord as prayed for under the present petition. Hence, I am inclined to reject the said petition.

Hence, it is,

ORDERED

that the application under Section 151 of CPC dated 28.11.2023 filed by the defendant is hereby rejected on contest but without any order as to cost.

To **27.06.2024** for peremptory hearing of the suit.

Dictated and corrected by me:

Judge

Smt. Sudipa Banerjee
J.O. Code : 01148
Judge, 3rd Bench,
Presidency Small Cause Court,
Calcutta.