

EJECTMENT SUIT NO. 347 of 2019
C.N.R No. WBPS01-000878-2019

IN THE 4TH BENCH, PRESIDENCY SMALL CAUSE COURT
PRESENT: SMT. ARCHITA SEN, JUDGE BENCH-4, PRESIDENCY
SMALL CAUSE COURT.

ORDER NO-40
DATED 07.08.2025:

Today is fixed for hearing in respect of the petition dated 18.06.2025 under Order XXXIX Rule 7 of C.P.C, filed by the defendant. Both the parties file separate attendance through their respective Ld. Advocates. The plaintiff files written objection against the petition for local inspection.

The record is taken up for hearing.

Heard both sides in full. Perused the case record.

Considered.

It is stated by the defendant that the plaintiff has filed this suit on the ground of reasonable requirement. The suit building is G+8 storied and it is fully owned by the plaintiff. There are 20 room in that building. Though there are few tenants at the said building but most of the rooms are vacant. The appointment of a Commissioner is required for holding inspection of the suit building to ascertain the total number of rooms in possession of the plaintiff, the number of tenants, number of vacant rooms lying in possession of the plaintiff and the number of rooms otherwise lying vacant. The statement made by the plaintiff that the plaintiff reasonably required the suit premises is absolutely false.

The plaintiff filed a written objection against the petition and stated that the defense of the defendant has been struck out and now the defendant is not entitled to adduce any evidence. The defense taken by the defendant in its written statement is not in existence. So the instant petition also can not be allowed which was filed in support of its defense. In spite of that the defendants filed the instant petition only to delay the proceeding of the suit. Apart from that the rooms in possession of the plaintiff at the suit building were already inspected by the Commissioner appointed by this Court vide Order no.17 dated 13.12.2021. So inspection has been done in the presence of both the parties to the suit. Banking on these grounds the plaintiff prayed for rejection of the instant petition.

On perusal of the record it appears that the defense of the defendant against the delivery of possession has been struck out by this Court vide its Order No.38 dated 28.03.2025. There is nothing in the record from where it can be adumbrated that the said Order passed by this Court has been challenged by the defendant before any forum or not. So the aforesaid Order is very much in existence. Now the question is whether the defendant is entitled to file the petition under Order XXXIX Rule 7 of the C.P.C after striking out its defense, or not. The defendant in the written statement denied the ground of reasonable requirement of the plaintiff. The petition under Order XXXIX Rule 7 of the C.P.C, filed by the defendant, if allowed, will come in aid of such denial of the defendant. But as the provision of section-7(3) of the Act has been applied, the defendant is not permitted to gather materials in support of its defense. The local inspection of the property is typically sought to gather evidence or assess the present condition of the premises. The report of the inspection commissioner helps to substantiate the claim of the parties. But if a tenant has lost his right to defend himself by not paying rent in time, he can not ask for the help to gather materials to support a defense which he no longer has. The Ld. Advocate for the plaintiff rightly relied upon the decision of the Hon'ble Apex Court in **Modula India Vs. Kamakshya Singh Deo, (1988)4 SCC 619** wherein the Hon'ble Court held that in a case where the defense of the tenant has been struck out, the defendant would not be entitled to lead any evidence of his own. In this regard the Ld. Advocate for the defendant submitted that he will not going to adduce evidence. The only thing which he wants is to bring the clear picture of the possession of the plaintiff at the suit building, so that the Court can adjudicate the ground of reasonable requirement of the defendant. To this argument of the defendant it is to be stated that inspection of the suit premises has already been done and the report of the commissioner is lying with the record. If on perusal of the report and after going through the other materials on record this Court thinks that the actual scenario of the suit building has not come to the Court properly, then it is the discretion of the Court to pass an appropriate Order.

In view of such circumstances, this Court intends to pass the following order--

O R D E R E D

The petition dated 18.06.2025 under Order XXXIX Rule 7 of the Code of Civil Procedure is rejected on contest.

The petition under order XXXIX Rule 7 of the Code of Civil Procedure, filed by the defendant, is thus disposed of on contest and without any costs.
To 24-09-2025 for further evidence of PW-1.

Typed, Corrected and Printed by me.

Judge, Bench-4
Presidency Small Cause Court.
J.O Code WB01174

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