

**Ej. Suit No. 576 of 2004**  
**CIS No. WBPS01-001061-2004**

**Order No. 102**  
**13.01.2026**

Today is fixed for passing order in respect of the petition under order-39, Rule-7 r/w Section 151 of the CPC filed by the defendant.

Both sides have filed their respective haziras.

I have already heard in respect of the petition filed by the defendant on earlier occasion.

Now record is taken up for passing order.

This is an application filed by the defendant under Order-39, Rule-7 r/w Section 151 of the CPC.

The defendant submitted that he has filed an application u/s 151 of the CPC praying for permission to undertake the repairing work in the suit premises and also for direction upon the plaintiffs to open the gate meant for egress and ingress and also restore the water connection in the suit premises which is alleged to have been disconnected by the plaintiff. Thus, commission is required to inspect the suit premises for taking note whether the plaintiffs have closed one door meant for egress and ingress in the suit premises and if they have also broken portion of one rock (verandha) in front of the suit premises and blocked some portion by fixing iron grill and also stopped water connection in the said premises.

In reply to the above, the plaintiffs by filing their written objection submitted that a few months ago only the plaintiff repaired the entire premises spending huge amount. The defendant never pointed out to the Ld. Commissioner regarding the condition of the suit premises during the commission work. It is further contended that the suit premises has two doors, one door used by the defendant and the other used by the plaintiffs and the door used by the defendant for egress and ingress is still open and now the defendant intends to use the main door also which was specifically used by the plaintiff and that door was never used by the defendant from the inception of the tenancy. It is further denied by the plaintiff that he ever broke his own house as alleged by the defendant or that he disconnected the water connection. It is submitted that the commissioner finally submitted his report after four years completing the commission work and this application has again been filed to delay the proceeding of the suit. Thus prays for dismissal of the application.

Upon perusal of the record, it appears that prior to this also the plaintiff had sought commission at the suit building. Although the commission was allowed on 28.07.2017, the report was submitted by the Ld. Commissioner only on 13.06.2022. Upon perusal of the said report, in page 10 it has been reported that there are two entrances on the ground floor of the suit building, main entrance being West facing opening on to Nanda Kumar Chowdhury Road which is the main entrance and commonly used by the plaintiffs and the defendants. The other one being on the Southern side of the ground floor opening to Dinabandhu Lane which is used by the defendants only. It is not that the defendant can not have access to the suit premises or that he does not have any other alternate route. Next, the door put under lock and key by the plaintiffs were commonly used by the parties as stated by the defendants or exclusively used by the plaintiffs as stated by them, is a matter of trial and the parties have to prove their respective contentions by producing cogent evidence and this can not be ascertained by commission. Asking the commissioner to find this out would mean to collecting the evidence for a party. Further, regarding the breaking of the rock (verandah) as alleged by the defendants, I do not find anything

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which suggests that tenancy of the defendants included such rock (verandah), hence even if the plaintiffs has broken such verandah, it is not included in the tenancy of the defendants.

In view of the above, I do not find any merit in the application of the defendants, hence, the application under order-39, Rule-7 r/w Section 151 of the CPC filed by the defendant is rejected on contest.

To **09.02.2026** for hearing application under section 151 of the CPC filed by the defendant.

Dictated and corrected by me:

*Judge*

**Glady Bomjan**  
**(J.O. Code: 01039)**  
**Judge, 3<sup>rd</sup> Bench**  
**Presidency Small Cause Court,**  
**Calcutta**