

S/L. 5.
26.08.2019
MNS

**Calcutta High Court
In The Circuit Bench At Jalpaiguri
Appellate Jurisdiction**

C. O. No. 43 of 2019

**Biplab Kumar Basu
Vs.
Sri Ramendranath Roy**

Mr. Soumyajyoti Datta,
Mr. Manotosh Bhaish

...for the petitioner.

Mr. Akram Hossain

...for the opposite party.

Affidavit-of-service filed in court today be taken on record.

Both sides are represented in court today.

The grievance of the plaintiff/petitioner is that, in a suit for declaration of the petitioner's tenancy right and consequential remedies, the petitioner filed an application under Section 151 of the Code of Civil Procedure, wrongly captioned as "read with Section 35 of the West Bengal Premises Tenancy Act" as well, to which a written objection was filed by the opposite party, which application was rejected by the impugned order.

The trial court proceeded on the premise that there was no proof of necessity of 'essential repairs' and as such rejected the said application.

Learned counsel appearing for the opposite party takes an objection that, unless an Engineer Commissioner is appointed to

ascertain the necessity and nature of repair, no such order of repair could be granted.

Upon hearing both sides, there is no doubt that the civil court has the power to grant a payer for repair under its inherent powers in a suit of the present nature, irrespective of the existence of Section 35 of the West Bengal Premises Tenancy Act, 1997, if the prayer is in aid of the reliefs claimed in the suit.

The present prayer for repair is, actually, in aid of maintaining the suit property in its present condition, which is obviously in aid of the suit.

The objection raised by the opposite party can be taken care of by appointment of a commissioner by the trial court to supervise the work of repair. However, there is no scope of any doubt as to the nature of repair required, as indicated in paragraph no. 4 of the application for repair.

It is evident from the said paragraph that the ceiling (roof) of the shop room is cracked and may collapse at any time, causing casualties. There has been seepage of water through the leaks in the ceiling and damages to the goods of the plaintiff kept in the shop room due to such condition. Moreover, the shutter of the shop room is fully damaged and needs to be repaired at the earliest.

As such, C. O. No. 43 of 2019 is disposed of by directing the trial court to fix a time-frame within which the petitioner will complete the repair work and to appoint a commissioner from among the advocates of the concerned trial court, to supervise the work of repair.

The petitioner is hereby permitted to repair the suit premises at his own cost, without

claiming any special equity, in terms of the averments made in paragraph no. 4 of the application for repair filed in the court below, without changing the nature and character of the suit property.

The court below is directed to appoint such commissioner and fix a time-frame for completing the repair work within a fortnight from the date of communication of this order to the court below.

The remuneration of the commissioner, as fixed by the trial court, shall be borne equally by the parties, since the petitioner requires the repair work but the opposite party will also benefit from such repair to his own premises and also is the one who wants a vigil to be kept on such repair work.

There will be no order as to costs.

Let photostat certified copies of this order, if applied for, be made available to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)