

15.02.2021
Sl. No. 4
srm

C.O. No. 203 of 2021
Smt. Karabi Ghosh
Vs.
Sri Kartick Sarkar & Anr.

Mr. Ranjan Kumar Kali
...for the Petitioner.

Mr. Sunny Nandy,
Mr. Purnendu Maity,
Mr. Subha Pathak
...for the Opposite Party No.1.

None appears on behalf of the Kolkata Municipal Corporation despite service.

This revisional application is filed challenging an order dated January 6, 2021 passed by the learned Judge-in-Charge, of 8th Bench, City Civil Court at Calcutta in Title Suit No.1196 of 2016 pending before the learned Judge, VIII-th Bench. The petitioner is aggrieved by an order of repair of a shop room, which is the suit property, allowed by the learned Court below. By the order impugned, the learned Court below upon considering the photographs and the submissions made on behalf of the respective parties came to the conclusion that the roof of the shop room was badly damaged and the landlord was not taking any steps towards repairing the same. Thus, the learned Court below relying upon the decision of Loken vs. Ashima reported in AIR 1977 Cal 318 allowed the plaintiff

No.1/opposite party No.1 to repair the roof of the shop room without altering the nature and character of the suit property.

Mr. Kali, learned Advocate appearing on behalf of the petitioner, submits that already a demolition proceeding has been initiated by the Kolkata Municipal Corporation and some demolition was done during the pendency of the suit. The petitioner has further submitted that the learned Advocate for the petitioner could not make appropriate submissions before the learned Court below and the learned Court below ought to have given another opportunity to the petitioner to represent her case.

Mr. Maity, learned Advocate on behalf of the plaintiff/opposite party No.1, submits that the repair, as directed by the learned Court, has been done only of the roof of the suit property by way of tiles with brick and mortar on top. It is submitted that there are no concrete construction with the help of rods and cement. It is further contended that the Kolkata Municipal Corporation was all through having notice of the suit as also the application for repairing which was pending before the learned Court below but neither the petitioner nor the Kolkata Municipal Corporation filed any objection or objected to the prayer for repair.

Under such circumstances, this revisional application is disposed of as nothing remains to be decided, as the repair has already been undertaken and completed. However, if it is found by the Kolkata Municipal Corporation that there has been any unauthorised construction the Kolkata Municipal Corporation shall be at liberty to make appropriate application before the learned Court below. The petitioner, who is the landlord shall not be held liable for any unauthorised construction on the premises, as the construction has been done with the leave of the Court and upon the application of the plaintiff/tenant.

As the repair of the roof has already been completed, I do not find any reason as to why any contempt application would be maintainable against the petitioner in so far as it relates to the obstruction to the repair. This order is restricted only to the repair made on the roof of the shop room and no other issues which are before the learned Court below have been considered.

It is also submitted that the nature and character of the suit property has not been changed by virtue of the such repair. As the suit is pending before the learned Court below, the landlord is always at liberty to make appropriate application for appointment of a Commissioner for local

inspection if, in his opinion, a fresh construction was made under the garb of repair, in violation of the order of *status quo* as also violation of the order dated January 6, 2021.

This revisional application is, thus, disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)