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08.03.2021
(p.jana)

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION**

(Via Video Conference)

CO No. 367 of 2021

**Sharad Subramanyan & anr.
-versus-
Laxmi Housing Udyog Private Limited**

Mr. Srijib Chakraborty,
Mr. Chayan Gupta,
Mr. B.M. Joshi,
Mr. Aniruddha Agarwalla,
... for the petitioners.

Mr. Suddhasatva Banerjee,
Mr. Sujit Banerjee,
Mr. Nilay Sengupta,
Ms. Swati Agarwal,
... for the opposite party.

The defendants in a suit for eviction are the petitioners of the present revisional application under Article 227 of the Constitution of India.

The defendants are aggrieved by the order dated January 28, 2021 passed by the learned Civil Judge (Senior Division), 4th Court, Alipore in T.S. No. 67 of 2016.

The plaintiff/opposite party in the said suit filed an application for holding local investigation of the suit property under Order XXVI Rule 9 of the Code of Civil Procedure on the points enumerated under Schedule 'B' of the said application.

The learned Trial Judge by the order impugned instead of appointing Investigation Commissioner appointed an Advocate Commissioner to hold local inspection of the suit

property treating the said application as one under Order XXXIX Rule 7 of the Code.

Mr. Srijib Chakraborty, learned counsel appearing on behalf of the petitioners, relying on the Division Bench decision of this Court in the case of *The Institution of Engineers (India) and another –versus- Bishnu Pada Bag and another* reported in **AIR 1978 Cal 296** submits that the plaintiffs are attempting to fish out evidence by the proposed inspection.

The opposite party is seeking eviction of the petitioners from the suit property, inter alia, on the grounds of reasonable requirement after building and re-building, the said ground of eviction demands demonstration of the present condition of the suit property before the Trial Court and for the said purpose inspection of the suit property is relevant and necessary.

Therefore, the prayer of the petitioner for holding such local inspection cannot be denied on the ground as suggested by Mr. Chakraborty. The Division Bench decision of this Court in the facts and circumstances of the present case is misplaced.

The order impugned does not call for any interference.

CO 367 of 2021 is dismissed. No order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance of all requisite formalities.

(Biswajit Basu, J.)