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SK
Ct. No. 18
11.08.2021

**C.O. No. 539 of 2021
(Via Video Conference)**

M/s. Pragati Pratisthan Pvt. Ltd.

Vs.

Umed Kumar Kochar

Mr. Krishna Das Poddar ... For the petitioner.

Mr. Arijit Roy,
Mr. Pratit Sarkar ... For the opposite party.

The revisional application under Article 227 of the Constitution of India is at the instance of the plaintiff in a suit for eviction and is directed against Order No. 43 dated February 15, 2021 passed by the learned 3rd Bench, Presidency Small Causes Court at Calcutta. In the said suit being Ejectment Suit No. 108 of 2016.

The learned trial Judge by the order impugned has allowed an application filed by the defendant/opposite party for holding local inspection of a non-suit property.

On perusal of the application under Order XXXIX Rule 7 of the Code of Civil Procedure, it appears that the defendant is seeking inspection of such non-suit property to ascertain the existing accommodation, measurement and mode of user available to the plaintiff in the said non-suit property, if there be any.

The application does not disclose how the plaintiff is related to the said non-suit property and the point on which the said inspection has been sought for

demonstrates that the application is based on guesswork and aimed to fish out the evidence.

The provision of Order XXXIX Rule 7 of the Code cannot be resorted to achieve such aim.

The learned trial Judge, therefore, is not justified in allowing the said application, as such, the order impugned is not sustainable and is, accordingly, set aside.

C.O. 539 of 2021 is thus allowed without any order as to costs.

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

(Biswajit Basu, J.)