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2022

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C.O. 842 of 2022

**Sri Sankar Sanyal
Vs.
Sri Achut Sanyal & Ors**

Mr. Amal Kumar Banerjee,

... For the petitioner.

The subject matter of challenge in this revisional application is against the prayer for local inspection being allowed under Order 39 Rule 7 of the Code of Civil Procedure.

Mr. Amal Kumar Banerjee, learned advocate appearing for the petitioner/plaintiff submits that in a suit for declaration and injunction, instituted in the year 2016, the prayer for local inspection has been purposefully made in a guise of urgent repairing of the suit property, when the suit was admittedly at the evidence stage.

The attention of the Court is drawn to annexure P-6, being page 30 and 31 of the instant revisional application, wherein there has been some observations made by the Court below to the effect that defendants have neither filed the petition for repairing under any provisions of law, nor filed an application under Order 39 Rule 7 of the Code of Civil Procedure, for local inspection.

It is contended by the learned advocate for the petitioner that being emboldened by such observation, made earlier by the Court below in order dated 09.02.2021, the petitioner has filed the instant petition for repairing simply to drag the suit.

It is nothing but a harrasive approach intended to cause protraction of trial.

Learned advocate appearing for the petitioner seriously challenges with regard to the point C and D, mentioned in the prayer for local inspection, submitting that those points are not connected with the repairing issue.

The extent of damage of the suit building, according to the petitioner, is not ascertainable merely upon visiting the suit property by way of local inspection by learned inspection commissioner.

The entire efforts, according to the petitioner, is to stall the proceeding by this or that way.

When the suit is admittedly at the evidence stage, there cannot be any prejudice to claim at the instance of petitioner/plaintiff by reason of such local inspection being held.

The entire purpose of the defendants/opposite parties is to reveal the true picture of the suit property with regard to their possession revealing the existing condition of the building.

The Court below has not yet allowed the prayer for repairing. It has simply allowed the prayer for local inspection upon appointing local inspection commissioner.

Upon perusal of the impugned order, it appears that merely by reason of holding local inspection, there is no scope of causing any prejudice to the petitioner/plaintiff.

The report of inspection commissioner, if submitted, however, may not be accepted without providing the petitioner a scope to challenge the report of local inspection commissioner.

Petitioner is given liberty to file a petition to challenge the report of local inspection commissioner, particularly with reference to the points mentioned in the petition for local inspection, and the points raised before this Court, referred hereinabove.

If any such petition is furnished within three weeks from the date of communication of this order to the court below, the same shall be addressed to by the Court below and resolve the same in accordance with the law, providing sufficient opportunity of hearing to either of the parties to this case, but without granting unnecessary adjournment, unless it is extremely unavoidable.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)