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C.O. 1175 of 2022

**Shahnawaz Mullick & Ors.
Vs
Mst. Kaikusha Malik & Anr.**

Mr. Asit Baran Raut,
Ms. Ishita Raut,
... For the petitioners.

Mr. Sounak Bhattacharya,
... For the opposite parties.

Liberty is given to learned advocate-on-record for the petitioner to correct the cause title.

The subject matter of challenge in this revisional application is against an order dated 5th April, 2022 allowing local inspection under Order 39 Rule 7 of the Code of Civil Procedure.

Mr. Asit Baran Raut, learned advocate for the petitioners/defendants submits that the learned Court below has erroneously allowed the prayer for local inspection simply to fish out evidence favourable to the purpose of plaintiffs. It is also contended that the prayer for local inspection was not at all needed, and the Court below being oblivious of the order dated 19th January, 2022 has mechanically granted the prayer for local inspection.

It is further submitted by the learned advocate for the petitioner that by order dated 19th January, 2022, plaintiffs were directed to restore the possession

of the flat No. 3 and the attached store room in the first floor to the defendant No. 5 within seven days from the date of order and in default, the defendant No. 5 will be at liberty to seek for police help for compliance.

In compliance of such direction, Special officer was appointed by the Court to restore the possession to defendant No. 5 with respect to flat No. 3 of the first floor and the attached store room of the suit property.

It is thus contended by the petitioners that when there has already been local inspection, and pursuant to which there has already been restoration of possession of flat No. 3 along with store room attached there with on the first floor of the suit property to defendant No. 5, further local inspection appears to be redundant.

Per contra, Mr. Sounak Bhattacharya, learned advocate appearing for the opposite parties/plaintiffs submits that entire endeavour exercised by the Court below was to ascertain the existence of a store room, said to be adjacent to flat No. 4 of the first floor, or not, possession of which has been given by the Court Officer to defendant No. 5, and none else.

While making elaboration of such objection, Mr. Bhattacharya submits that there cannot be any claim of prejudice to be suffered by reason of the local inspection being held with respect to the proposed

site-referred hereinabove.

Having considered the submissions of both the sides, it appears that though the defendant No. 5 has already been favoured with restoration of possession with respect to flat No. 3 in the first floor and the store room attached therewith on the first floor of the suit property, but in the event of such local inspection being held, there would neither be any inconvenience, nor any hardship to be claimed by the petitioners/defendants.

Since local inspection, as ordered to be made in this case, is purely to ascertain the existence of a store room adjacent to flat No. 4 of the first floor, or not, the possession of which has already been given by the Court officer to defendant No. 5, the order impugned does not call for any interference.

However, liberty is given to petitioner/defendant to raise objection against the report of the learned Inspection Commissioner, to be filed, in context with the order passed by the Court below dated 19th January, 2022 directing restoration of the possession of flat No. 3 on the first floor, and the store room attached therewith, and if any such objection is raised, the same shall be resolved in accordance with the provisions of the law providing sufficient opportunity of hearing to either of the parties to this case

Petitioners are directed to make communication of this order to the learned court below.

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)