

10.06.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.1223 of 2022

Sk. Tasaddak Hossain
Vs.
Sk. Iftekhar Hossain & ors.

Mr. Debasish Roy,
Mr. Sk. Nezamuddin
...for the petitioner

Mr. Rabaindranath Mahato,
Mr. Aritra Shankar Ray
...for the opposite parties

Subject-matter of challenge in this revisional application is against a prayer for repairing work being allowed in respect of a shop-room, alleged to be in possession of the defendant no.1 in the suit.

Mr. Roy, learned advocate appearing for the petitioner/plaintiff submits that admittedly this is a suit for partition, and there is an order of ad interim injunction directing parties to maintain *status quo* in respect of possession, nature and character of the suit property till disposal of the suit, vide order dated 7th December, 2020.

Mr. Roy contends that the court below has erroneously granted permission for repairing work in respect of the alleged shop-room of defendant no.1 in violation of the order of *status quo*, already granted in this case, and even without considering the report of learned Inspection Commissioner revealing the present

condition/position of the alleged shop-room, if required immediate repairing or not.

It is further contended by Mr. Roy that the impugned order suffers from illegality for not having considered the report of the learned Inspection Commissioner, which is ordinarily considered by the court below, while making consideration for repairing of suit property.

Mr. Roy has rival claim over the alleged shop-room, said to be in possession of the defendant no.1. In support of rival claim of petitioner over the alleged shop-room, documents were produced before the court below, likewise documents were also produced in respect of the alleged shop-room by defendant no.1.

Thus, it is clear that there is a contesting claim over the alleged shop-room between the parties.

Per contra, Mr. Mahato, learned advocate appearing for the opposite parties submits that there is nothing left to be adjudicated upon in this case, as the proposed repairing work, after being permitted by the court below by order dated 22nd May, 2022, has already been concluded on 3rd June, 2022.

Though there has been no previous Inspection Commission to reveal the status of the alleged shop-room requiring immediate repairing or not, but as per order of the court below, the learned Commissioner, after being appointed visited the alleged shop-room on

26th May, 2022 before undertaking proposed repairing work and further visited on 3rd June, 2022, when the repairing work had already been concluded.

It is thus submitted by Mr. Mahato that repairing work was undertaken after the learned Commissioner had visited the suit property, as per order of the court below.

Mr. Roy disputes with the submission, as advanced by Mr. Mahato, submitting that the repairing work is still continuing, and it is basically intended to go for permanent construction, in violation of the order of *status quo*, under the guise of carrying out repairing work.

When Mr. Mahato has submitted that repairing work has already been concluded, the Court finds nothing to disbelieve the same, but at the same time the objection raised by Mr. Roy cannot be disregarded.

To unfold the contention raised by Mr. Roy, liberty is given to petitioner to apply for Local Inspection of the alleged shop-room within seven (07) days from the date of communication of this order before the court below, and if any such application is filed for local inspection, that shall be immediately disposed of by the court below appointing local Inspection Commissioner, to reveal the exact state of affairs, so that the controversy surfaced over the alleged

continuing repairing work may be put to an end taking order of the court below.

This would not, however, prevent the petitioner to take recourse to the provisions of law for the alleged violation of ad interim order of injunction, upon proof of the circumstances, in accordance with the provisions of the law.

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

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)