

18.08.2022
Item No.3
Ct. No.7
CHC
(disposed of)

C.O.1614 of 2022

**Smt. Mira Gupta & anr.
Vs.
Netai Chandra Naskar**

Mr. Tarak Nath Halder
...for the petitioners

Mr. Prabir Adhya
...for the opposite party

The subject-matter of challenge in this case is against the rejection of a prayer for local inspection coupled with a prayer for repairing of a tenanted house under possession of the petitioner/defendant.

By the order impugned dated 13th January, 2021, the court below rejected both the prayers observing therein that the proposed repairing was not necessary, because by order dated 23rd December, 2019, the court below already rejected such prayer. The previous rejection of the prayer for repairing was made taking into the account of the learned Inspection Commissioner's report, filed in this case.

Mr. Halder, learned advocate appearing for the petitioners/defendants/tenants submits that there has been a previous local inspection held in connection with a prayer for reasonable requirement, set up as one of the grounds in eviction suit, instituted against

the petitioners by the opposite party. The prayer for repairing was rejected in December, 2019.

Mr. Halder, further contends that the impact of last 'Amphan' subjected the tenanted house to suffer a further damage, and condition of the tenanted house has become wretched and worsened as well. Since, the prayer for repairing was rejected by order dated 23rd December, 2019 upon consideration of the local inspection report, filed in context with reasonable requirement, it would be purely misconceived one to reject the prayer for local inspection coupled with proposed repairing in view of the previous rejection of the same prayer, without adhering to the facts disclosed in the petition for repairing that the condition of the tenanted house has suffered further damage receiving impact of last 'Amphan'.

Per contra, Mr. Adhya, learned advocate appearing for the opposite party/plaintiff submits that the purpose of the revisional application is purely harassive, and it is intended to cause delay to the disposal of the suit. The order impugned was passed on January, 2021, which was challenged upon filing the instant revisional application on 16th June, 2022, i.e. with a delay of more than six (06) months.

It is thus submitted by the learned advocate for the opposite party that there is no urgency needing immediate repairing of the tenanted house.

It is also submitted by the learned advocate for the opposite party that when there has been previous rejection of the same prayer by order dated 23rd December, 2019, the subsequent prayer for repairing is nothing but a manufactured one, and should not be entertained.

Having considered the submission of both sides, it appears that suit premises was subjected to local inspection on the prayer of the opposite party/plaintiff in context with the grounds set up in the plaint based on reasonable requirement, and others. There is a previous rejection of the prayer for repairing on 23rd December, 2019. Admittedly, such rejection was upon consideration of the condition of the tenanted house, the then prevailed.

As per submission disclosed by the petitioner, the tenanted house suffered further damage receiving impact of last 'Amphan', there arose a necessity to revisit the prayer if repairing is at all needed pending decision of suit. Mere holding of local inspection of the tenanted house, as proposed to be held, would not automatically allow the prayer for repairing. It is for the court to decide whether repairing is necessary or not in context with the report, to be submitted by the learned Inspection Commissioner. There is hardly any chance of claiming any prejudice in the event of local inspection being held upon notice to the both parties.

The impugned order dated 13th January, 2021, passed by learned Civil Judge (Junior Division), Bidhannagar, North 24 Parganas, in Ejectment Suit No.16 of 2012, is set aside. The prayer for local inspection be allowed.

Learned court below is directed to appoint learned Inspection Commissioner upon deciding the necessary fees connected therewith, and after such appointment of local Inspection Commissioner, the local inspection may be held upon notice to both the parties in terms of the points disclosed in the petition for local inspection within fortnight from the date of communication of this order.

It is, however, clarified that subsequent to the acceptance of the Local Inspection Commissioner's report, with notice to the other side, the prayer for re-hearing may be revisited giving a fresh hearing for the purpose to both the sides on a date to be suitably fixed by the court below but without granting any unnecessary adjournment, unless it is extremely unavoidable.

While endeavouring such exercise, the learned Inspection Commissioner's report may be taken into account by the court below.

Since the suit has already been set for peremptory trial, for which the same has been taken off, the logical conclusion of the suit may be reached within

four (04) months from this date after causing disposal of interlocutory application, if there be any pending, in the meantime.

Petitioner is directed to make communication of this order to the learned court below.

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.)