

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

**CO. No. 1699 of 2022
GKW Limited
Vs.
Esemen Metallo Chemicals Private Limited**

For the Petitioner/Defendant : Mr. Jayanta Sengupta,
Mr. Arjun Mookerjee.

For the Respondent/Plaintiff : Mr. Nirmalya Dasgupta,
Mr. Anujit Biswas,
Mr. Jitendra Patanaik,
Ms. Pallavi Pain.

Heard On : 08.08.2022.

Judgment : 25.08.2022.

Subhasis Dasgupta, J:-

Subject matter of challenge in this revisional application is against the order dated 22nd March, 2022, passed by Learned Judge, 4th Bench, Presidency Small Causes Court, Kolkata in Ejectment Suit No. 248 of 2018, rejecting the petition under Section 151 of Code of Civil Procedure, praying for restoration of supply of water in the suit premises.

Admittedly, the pending litigation is for recovery of khas possession of suit premises upon evicting petitioner/defendant therefrom.

Mr. Jayanta Sengupta, learned advocate appearing for the petitioner submitted that the supply of water in the suit premises had been totally

blocked by opposite party from overhead tank, causing immense problems to the petitioners having drinking water, as well as water in the bathroom situated in the suit premises.

It was further contended that due to such blockage of water connection from overhead water reservoir, daily affairs of petitioner had also been jeopardized. The complaint already lodged to the police station alleging sudden stoppage of water connection to the suit premises of petitioner, from the overhead water tank, failed to restore water connection.

Mr. Sengupta, thus strenuously argued that in the absence of water supply, the entire business of the petitioner had suffered a crisis, apart from problems being faced in the use of bath and privy situated in the suit premises for want of water.

Upon advancing such arguments, Mr. Sengupta submitted that the court below just mechanically rejected the prayer for restoration of water supply without adhering to the basic needs of the petitioner, which is guaranteed under Article 21 of the Constitution of India.

Mr. Sengupta also submitted that though there had been a Local Inspection Commission held prior to the disposal of application under Section 151 C.P.C. praying for restoration of supply of water in the suit premises, but since learned Pleader Commissioner had passed away in the meantime, petitioner could not find occasion to dispute with the Commission already held in this case, which must be taken in view as to

under what circumstances the learned Pleader Commissioner's report could not be disputed.

Per contra, Mr. Nirmalya Dasgupta, learned advocate appearing for the opposite party, advertng to Para-3 of the plaint submitted that the suit property, from which the petitioner was sought to be evicted, had been used as godown for storage purpose, where there was no permanent structure dividing the same into rooms. As regards long usage of suit premises as godown, Mr. Dasgupta drew attention of the Court to a notice dated 12th December, 2007, addressed to the Director of Esemn Metallo Chemicals Private Limited to establish that the suit premises had all along been used as godown.

Mr. Dasgupta further contended that to ascertain the alleged blocking of water pipeline, there had been a Local Inspection as per order of court below, and the learned Commissioner already submitted his report, indicating therein that as there had been no water pipeline connection from the overhead reservoir to the defendant's bath and privy of suit premises, so the question of putting sudden blockage to the water pipeline did never arise at all, though the learned Commissioner found an old water pipeline in side the bath – cum – privy, water tap and basin of such subject property.

Reliance was placed by Mr. Dasgupta on a decision reported in **1996 SCC OnLine Cal 272** delivered in the case of **Allahabad Bank Vs. Sourendra Nath Saw & Anr.** that once the report of the learned Commissioner was accepted for want of any objection being raised, such

learned Commissioner's report could not be disputed on subsequent occasion for whatever maybe the grounds therefor.

Upon referring the learned Commissioner's report, Mr. Dasgupta replied that when the petitioner had already accepted the learned Commissioner's report, revealing that there was no water pipeline connection from the overhead water tank to the ground floor leading to the bath – cum – privy, water tap and basin of suit premises, and when petitioner had been using the suit premises as such from long time past, without any water connection to the alleged bath, privy and water tap of suit premises, the prayer for restoration of water connection would simply lead to manufacture evidence in this case.

In view of such submission disclosed hereinabove, this Court is to address one and only issue as to whether there has been any illegality committed by the court below in rejecting the prayer for restoration of water supply in aid of an application under Section 151 C.P.C., or not.

The undenying position is that a local inspection of the tenanted premises was held on January, 2020. The learned Commissioner submitted his report finding no visible water line connection from the overhead water tank to the tenanted premises, now under reference. The inside old water pipeline found in the bath-cum-privy of the tenanted premises, however, could not be found to be connected with the overhead tank outwardly.

Thus finding no water pipeline being outwardly fitted to have been connected from the overhead water tank to the bath-cum-privy of the

tenanted premises, the possibility of putting any blockage to the water connection line was eliminated, as per report of the learned Inspection Commissioner.

When the petitioner has been used to make use of the tenanted premises for long time past in a condition as it exists, without any supply of water to the bath-cum-privy in the tenanted premises from long time before, in the absence of any existence of any water pipeline being connected from the overhead reservoir to the bath-cum-privy of the tenanted premises, the allegation of having blocked the water pipeline deliberately is far from belief.

The report of the learned Local Inspection Commissioner not being challenged earlier, the same cannot be challenged at a later stage merely on the allegation that there has been blockage put in the water pipeline intending to stop the water supply to the tenanted premises of petitioner.

The prayer for restoration of water connection not being supported by convincing materials, the court below rightly rejected the same.

The impugned order as such may not be disputed, it would remain unaltered.

The revisional application stands dismissed, and accordingly stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Subhasis Dasgupta, J.)