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C.O. 2179 of 2022

**Sri Santosh Shaw
Vs
Sri Biswanath Mandal**

**Mr. Kushal Chatterjee,
Mr. Abir Lal Chakravorti,
... For the petitioner.**

**Mr. Sovan Mukherjee,
Mr. Goutam Malik,
... For the opposite party.**

Liberty is given to the petitioner to correct the cause title as well as the prayer portion of this revisional application.

The subject matter of challenge in this revisional application is against the order dated 26th April, 2022 passed by learned Civil Judge (Junior Division), Bidhannagar, North 24 Parganas in Title Suit No. 98 of 2019 declining to grant any stay upon recalling the order dated 23rd November, 2021 thereby permitting the opposite party to undertake repairing work.

Admittedly, this is a suit for declaration of tenancy instituted in the year 2019, wherein the defendant/opposite party entered his appearance on 28th June, 2019.

In connection with the pending suit, a prayer for repairing was filed by the opposite party/plaintiff on 28th September, 2021, which

was allowed by the Court below on 23rd November, 2021.

The petitioner/defendant challenged the repairing work upon filing a vacating application, and also for recalling such order of repairing.

Mr. Kushal Chatterjee, learned advocate appearing for the petitioner submits that there was no previous local inspection held in respect of the premises requiring immediate repairing or not. The extent of the damage suffered by the suit property needing immediate repairing, thus could not be established, Mr. Chatterjee contends.

Upon referring the schedule of the proposed repairing petition, Mr. Chatterjee submits that the schedule is vague one, and more so, the proposed repairing is intended to be done beyond the portion of the tenanted premises.

It is also contended by Mr. chatterjee that a local inspection commission petition separately has been filed by the petitioner to reveal the exact condition of the suit premises, which has not yet been disposed of.

It is thus submitted that such local inspection commission filed by the petitioner on 7th December, 2021 should be decided first, prior to granting repairing work.

Per contra, Mr. Sovan Mukherjee, learned

advocate for the opposite party submits that a solitary look to the schedule would not reveal the purpose of the repairing petition. The purpose of repairing petition, according to learned advocate for the opposite party, has been disclosed in paragraph 2 of the repairing petition.

Upon advertizing to order dated 23rd November, 2021 permitting the repairing work to opposite party/plaintiff, learned advocate for the opposite party submits that though there has been no previous local inspection commission to reveal the extent damage suffered by the suit house, but the Court below has already appointed a local inspection commissioner, so that there may not be any contravention occurred in respect of the proposed repairing work, and such pleader commissioner having been appointed, there is hardly any scope of claiming any prejudice, as raised by the petitioner.

More so, the petitioner even after being noticed has not co-operated with the commission work.

The learned Commissioner so appointed, as per submission disclosed by the opposite party, is due to finish his commission work shortly upon receiving co-operation of commission work from the petitioner.

Having considered the submission of both sides, it appears that the prayer for repairing, allowed by the Court below has not been recalled by the impugned order.

Admittedly, there has been no local inspection commission held prior to order granting repairing. Ordinarily, the extent of the damage suffered by the suit premises is ascertained from the report of the learned local inspection commissioner. In this case by the order dated 23rd November, 2021, the Court below has allowed repairing first on the prayer of the opposite party, and subsequently appointed one local inspection commissioner with a direction upon the opposite party to deposit necessary expenses connected with the local inspection.

The purpose of appointing learned inspection commissioner subsequent to order granting repairing work may not be deciphered as no specific reason has been assigned in the order itself. In such circumstances, it would be very difficult to reveal the objective purpose of appointment of local inspection commissioner, when particularly in a case there has been already an order permitting repairing work, and also other interpretation is available against the appointment of local inspection commissioner, subsequent to

order for repairing being allowed.

From paragraph 2 of the repairing petition, it appears that the proposed repairing was in respect of “tin shed front adjacent to the roof, and its required colouring for the purpose.”

As has already discussed that the extent of the damage having suffered by the tenanted premises now allegedly under possession of the petitioner, could not be ascertained by the Court below, while granting the prayer for repairing, the subsequent appointment of learned Pleader Commissioner under Order 39 Rule 7 of the CPC would be without any useful purpose.

The Court below should have allowed the local inspection commission first, and upon due appraisal of the report, the prayer for repairing should have been considered by the Court below, giving a hearing for the purpose to the other side.

Since, the learned Commissioner appointed on 23rd November, 2021 by the Court below has not yet completed his commission work, this Court is of the view that revisional application be disposed of permitting the opposite party to file a formal application praying for local inspection disclosing the proposed points of inspection, from which the extent of the damage having suffered by the tenanted house if any, may be ascertained,

and in terms there with, if any repairing is necessary that may be considered by the Court below giving a fresh hearing for the purpose to both the parties.

While endeavouring such exercise, the fresh hearing of the prayer for repairing may be expeditiously taken place, preferably within a period of three weeks from the date of communication of this order.

Learned advocate for the petitioner is requested to ensure all possible co-operation to the learned inspection commissioner, while holding the commission work, so that the commission may be conducted a meaningful one.

The fees of commission having already been deposited by the opposite party, the opposite party may not be burdened with the further liability to deposit any further sum regarding the expenses of the local inspection commission. The learned previous commissioner already appointed as such will remain undisturbed.

Consequently, the orders dated 23rd November, 2021 and 26th April, 2022 passed in Title Suit No. 98 of 2019 are set aside.

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)