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C.O. 2180 of 2022

**Sri Santosh Shaw
Vs
Smt. Ira Bakshi & Anr**

**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. 99 of 2019 allowing repairing work to be conducted simultaneous with appointment of learned advocate commissioner.

Admittedly, this is a suit for declaration of tenancy and injunction instituted in the year 2019.

Mr. Abir Lal Chakravorti, learned advocate for the petitioner submits that there was no previous local inspection commission held in respect of premises, to reveal if the tenanted premises needed immediate repairing or not. The extent of the damage suffered by the suit property

needing immediate repairing, thus could not be established, Mr. Chakravorti contends.

Upon referring the schedule of the proposed repairing petition, Mr. Chakravorti 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.

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 repairing. The purpose of repairing according to learned advocate for the opposite party, has been disclosed in paragraph 2 of the repairing petition.

Upon advertng to order dated 26th April, 2022 permitting the repairing work to opposite parties/plaintiff, learned advocate for the opposite parties 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 made upon due consideration of the local inspection commissioner report, if there be any.

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 26th April, 2022, 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 other interpretation is also available against the appointment of local inspection commissioner.

From paragraph 2 of the repairing petition, it appears that the proposed repairing was in respect of “roof of suit property, which got cracked in some places.”

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 26th April, 2022 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 parties 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 rendered a meaningful one.

The fees of commission having already been deposited by the opposite parties, the opposite

parties 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 order 26th April, 2022 passed in Title Suit No. 99 of 2019 is 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)