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C.O. 2293 of 2022

**Anup De Chowdhury
Vs
Prasanta Kumar Mullick**

Mr. Ashis Chandra Bagchi, Sr. Adv.
Ms. Sanjana Chakraborty,
... For the petitioner.

Mr. Soumen Banerjee,
Mr. Debdipto Banerjee, ... for the opposite party.

The subject matter of challenge in this case is against the rejection of a prayer for local inspection, proposed by the defendant during on going process of cross-examination of witness, examined by the plaintiff.

Mr. Ashis Chandra Bagchi, learned Senior Advocate appearing for the defendant/tenant submits that admittedly there has been a local inspection held earlier, and report was submitted, but it is a partial, rather truncated local inspection, relying upon which, the eviction suit may not be fairly adjudicated.

Mr. Bagchi further submits that plaintiff seeking eviction resides in a property owned by co-owners. The extent of the accommodation available to the plaintiff in a jointly owned properties has already been inspected by the learned Commissioner, while holding first local inspection, ignoring the petition furnished

by the petitioner/defendant proposing a complete inspection of four storied building, which was admittedly owned by joint owners.

Mr. Bagchi further contends that mere inspection, in respect of the alleged possession of plaintiff/opposite party in a property jointly owned by co-owners, would not reveal the actual extent of accommodation available at the moment for the plaintiff in a joint property and, therefore the partial and truncated inspection would be insignificant at the moment to facilitate appropriate decision to be returned by the Court below in a suit for eviction.

Per contra, Mr. Soumen Banerjee, learned advocate appearing for the opposite party submits that there has been previous local inspection earlier held in order to reveal the extent of accommodation available at the moment held by the plaintiff in a property being jointly owned by co-owners.

Such report of the Commissioner was submitted earlier in the year 2016, and after the acceptance of the learned inspection Commissioner's report, the suit has been set for argument, and it is at the on going stage of cross-examination, the instant prayer has been proposed by the petitioner/defendant simply to fish out evidence, which is purposive and also to cause delay to the disposal of the suit.

It is further contended by the learned advocate

for the opposite party that when there is previous inspection held earlier, and the report of which has already been accepted by the Court below, there is no justification of holding further inspection, merely on the prayer of the defendant to inspect the entire G+4 building owned by joint owners.

The proposed inspection, if allowed, according to the petitioner may be rendered infructuous, as the other co-owners may not permit the local inspection commissioner to inspect their rooms under their respective possession at the moment.

Admittedly, this a suit for eviction, wherein there has been previous local inspection held, as proposed by the plaintiff to reveal the extent of accommodation available in a property owned by co-owners.

The fundamental cause, espoused in the pleadings that due to paucity of accommodation available at the moment in the property being jointly owned, the plaintiff requires eviction of opposite party/defendant/tenant.

True, it is that upon receiving notice, defendant raised his voice upon submitting a petition to the local inspection commissioner, while holding first inspection, but it could not be considered by the commissioner for his failure to identify the scheduled premises, which is admittedly owned by joint co-owners.

The undenying position is that even after raising voice by the petitioner/defendant, some times in 2016 proposing to hold inspection of the total four storied building, jointly possessed by the opposite party/plaintiff with others, the petitioner/tenant did not do anything till the cross-examination of PW1. The cross-examination of PW 1 is going on. There is thus huge delay caused in the meantime, even after raising voice by the defendant proposing inspection of entire G+4 building, being jointly possessed by the co-owners.

The case of Mr. Bagchi is that there is other accommodation available in the joint property, and if such inspection is held, there may be fair adjudication of Ejectment Suit. In order to put an end to the litigation, the delay caused in proposing such local inspection may not be critically viewed, and should not be treated as a fatal, for the peculiarity of circumstances involved in this case.

The harassment thus caused for the belated approach of holding local inspection needs to be adequately compensated.

The revisional application is thus disposed of, upon setting the impugned order subject to the condition that petitioner will pay a cost of Rs.30,000/- (Thirty thousand) to the opposite party within seven (07) days from the date of communication of this order

to the court below.

Subject to the deposition of the cost, the court below may appoint learned inspection commissioner within three (03) days from the date of deposition of cost, upon deciding the expenses of the commission, as would be deemed fit and proper by the court below, and the commission work must be concluded within ten (10) days thereafter.

After submission of the commissioner's report, the cross-examination of PW-1 may be resumed, providing opposite party a scope to adduce evidence, upon recalling PW1, if necessary so that the opposite party may not be left unredressed for holding of local inspection belatedly.

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

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)