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C.O. 2828 of 2022

**M/s. Ashroy Construction & Ors
Vs
Sri Pankaj Mitra & Ors**

Ms. Sohini Chakraborty,
Ms. Prajaaini Das, ... For the petitioners.

Mr. Basudeb Rakshit,
... For the opposite parties.

Ms. Sohini Chakraborty, learned advocate appearing for the petitioners, while assailing the impugned order dated 18th July, 2022 passed in Misc. Case No. 51 of 2021 of learned Civil Judge (Senior Division), 6th Court, Alipore submits that the provisions of Order 39 Rule 7 has been misutilised for the purpose of holding an inquiry by the learned inspection commissioner under Order 39 Rule 7 CPC.

Adverting to points mentioned in serial Nos 3, 5, 7 and 8 of the schedule of points for inspection, Ms. Sohini Chakraborty submits that learned commissioner is not authorised to interrogate anybody to gather materials from the occupants of the building, if any to fish out evidence, which tantamounts to holding an enquiry, not permissible under Order 39 Rule 7 CPC.

Mr. Basudeb Rakshit, learned advocate appearing for the opposite parties submits that in a suit for specific performance of contract for violation of the terms of the contract pertaining to a developing

agreement, such prayer for local inspection has been made for the deliberate violation of injunction order granted by the Court below, restraining petitioners from creating any third party interest.

It is contended by the opposite parties that the opposite parties are the land owners, and prior to making delivery of flats to the opposite parties, the advantageous portion of the built up flats has been sold to flat owners/purchasers in deprivation of the right, title and interest of the opposite parties, as well as making sheer violation of the order of ad interim injunction.

Having considered the submission of both sides, it appears that order allowing local inspection in a Misc Case under Order 39 Rule 2A of the CPC is under challenge in this case.

A bare look to serial Nos. 3, 5 , 7 and 8 of the schedule of points for inspection would be sufficient enough to reveal that learned commissioner has been asked to gather materials after holding interrogation with the occupants, allegedly occupying some of the flats built up in the subject property under reference.

Making interrogation to anybody else is not at all permissible under Order 39 Rule 7 CPC.

In a situation like this, no further elaboration is felt necessary.

The revisional application is disposed of upon

setting aside the impugned order, with a liberty to petitioner to file a fresh application mentioning points for inspection, within the peripheries of the law, as available under Order 39 rule 7 CPC, in context with the observation made hereinabvoe, within a fortnight after reopening of Puja vacation of the Court below, upon supplying a copy of the revisional application well in advance to the petitioners.

It is, however, clarified that if any application for local inspection is filed afresh containing modified points within the peripheries of the Order 39 Rule 7 CPC, that shall be addressed to by the Court below, and dispose of the same in accordance with law, providing sufficient opportunities of hearing to either of the parties to this case, preferably within three weeks thereafter, on a date to be suitably fixed by the 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)