

10.05.2022
Item No.7
Ct. No.7
CHC
(disposed of)

C.O.1374 of 2020

**Sri Swapan Kumar Borai @ Swapan Kumar Bodal
Vs.
Sri Suman Saha & ors.**

Mr. Probal Kr. Mukherjee, Sr. Advocate
Ms. Shebatee Datta
...for the petitioner

Mr. Devdutt Mukherjee,
Ms. Taniya Bhowmik
...for the opposite parties

The affidavit-of-service furnished by the petitioner
be taken on record.

The subject-matter of challenge in this revisional
application is against the order dated 26th August,
2020, passed by learned Civil Judge (Junior Division),
1st Court, Malda, in Original Suit No.4 of 2020,
rejecting the application under Section 151 C.P.C.
praying for repairing of the premises under possession
of the petitioner.

Mr. Mukherjee, learned Senior Advocate appearing
for the petitioner submits that in a suit already
instituted by the petitioner praying for declaration of
his tenancy right, an application for repairing was
moved to carry out repairing to make the suit
premises effectively habitable, safe and secured.

Learned court below, according to Mr. Mukherjee,
has erroneously rejected the prayer for repairing

without considering the dilapidated and deserted look of the suit premises, in respect of which a tenancy declaration of the petitioner has been sought for.

Mr. Debdutt Mukherjee, learned advocate appearing for the opposite parties submits that the building is very old and in an extremely dilapidated condition.

English Bazar Municipality has already conducted survey work to ascertain the seriously damaged condition of the suit building, and ultimately passed order for demolition of the building, and such demolition order is very much with the knowledge of the petitioner. More so, there are many other tenants residing in the suit building. The condition of building is unsafe and unsecured, which may even be perceived from demolition order, learned advocate for the opposite parties argues.

It is also contended that to ascertain the extent of damage of the suit building, though the English Bazar Municipality has conducted survey, but in this case, if any local inspection is further directed to be held, that would be of no serious consequence.

Mr. Mukherjee replies to the submission of the opposite parties, submitting that the petitioner already deposited rent to opposite parties in support of his tenancy, and which has been rightly mentioned in the relevant averment of the plaint, and rent having been

refused by the opposite parties, presently the petitioner has been depositing monthly rent with the Rent Controller.

While making elaboration of the extent of damage of suit premises, and the need of immediate repairing, Mr. Mukherjee submits that if any local inspection is held in respect of the suit property, irrespective of the survey work, if already conducted by the English Bazar Municipality, that will not cause prejudice to any of the parties to the case.

Having considered the submission of both sides, it appears that need of urgent repairing may be objectively testified with the appointment of learned Inspection Commissioner by holding the local inspection in respect of the suit property. In that view of the matter, local inspection of the suit property appears to be must, so as to test the *bona fide* of proposed repairing work, sought to be effected in respect of the suit premises.

The impugned order dated 26th August, 2020 rejecting the prayer for repairing is thus set aside, giving liberty to petitioner to apply for local inspection under Order 39 Rule 7 C.P.C. prying for appoint of Local Inspection Commissioner to reveal the extent of the damage already sustained by the suit premises together with the need of immediate repairing. Such application may be filed within a week from this date,

and if any such application is made by the petitioner that shall be disposed of within fortnight thereafter, providing sufficient opportunity of hearing to either of the parties to this case, but without granting any unnecessary adjournment, unless it is extremely unavoidable.

It is, however, clarified that the petition for repairing, filed by the petitioner, dated 16th June, 2020, may thus to be heard out afresh taking help of local Inspection Commissioner report, and the learned court below shall be free to decide the same giving hearing afresh in accordance with the provisions of the law. While doing such inspection, proper notice to the parties must be given, who are made already parties to the suit.

With this observation/direction, the revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)