

Item No. 18
16.10.2023
Court. No. 19
GB

C.O. 1095 of 2023

Chaitanya Kumar Singhania
Vs.
Smt. Urmila Devi Gupta & Ors.

Mr. Dherendra Nath Sharma,
Mr. Shailendra Jain,
Mr. Sourav Mondal

...for the Petitioner.

Mr. Tarak Nath Halder

...for the Opposite Parties.

The petitioner is the tenant in respect of premises situated at P-92, CIT Road, Scheme No.VIM, Kankurgachi, P.S. – Phholbagan, Kolkata – 700054.

The order has two parts. By the order impugned, the learned court below rejected an application under Order 39 Rule 7 of the Code of Civil Procedure, filed by the petitioner. The other part of the order is not a subject matter of challenge in this revisional application.

The court rejected the application for local inspection, upon holding that the defendant had been allowed to repair the suit property by order dated December 8, 2011, but the repair work had not been undertaken. Thereafter, by order dated August 1, 2017, the defendant was allowed police help to carry out the repair work which was also not done. The defendant did not deposit the police cost. Again, in 2022, another application was filed for a local inspection in order to ascertain the extent of damage caused to the tenanted property, so that the repair may be undertaken.

The learned court, in my view, had arrived at such finding upon considering the past conduct of the defendant who failed to undertake the repair work, despite orders having been passed by the learned court below. However, as it is submitted by the petitioner that the tenanted premises had sustained damage to such an extent that it may result in serious accident, this Court directs as follows:-

- a) The application under Order 39 Rule 7 of the Code of Civil Procedure is allowed by setting aside the portion of the order dated January 13, 2023 by which the said application had been dismissed.
- b) A learned advocate commissioner shall be appointed by the learned court below. The remuneration shall be fixed by the learned court below. The petitioner shall bear all expenses for such local inspection.
- c) The local inspection will be held in the presence of the parties and a report shall be filed before the learned court below on the date fixed.
- d) If it is found that immediate repair would be required in order to prevent risk and to avert any kind of accident, the learned court below shall allow such repair under the supervision of the learned advocate commissioner. All costs shall be borne by the defendant.

The evidence which is going on, shall continue. The suit will proceed and the proceeding with regard to the repair shall not be an impediment towards continuation of the suit.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)