

10.2.2023
65
Ct. no. 652
sb

CO 970 of 2021

Sk. Rustom
Vs.
Abdul Rahim Alias Abdul, Since
deceased, her legal heirs, namely Ajmiri
Begum & Ors.

Mr. Musharraff Hussain ...for the Petitioner

Affidavit of service filed by the petitioner is taken on record. Opposite parties are not represented.

Leave to correct the date of impugned order, is granted.

Being aggrieved and dissatisfied with the order no. 97 dated 2.2.2021 passed in Ejectment suit no. 234 of 2006 passed by the learned court of presidency small cause court, 5th Bench at Calcutta, the present revisional application under Article 227 of the Constitution of India has been preferred.

The petitioner contended that the opposite parties/plaintiffs instituted aforesaid suit for eviction and recovery of vacant possession under the provision of West Bengal Premises Tenancy Act, inter alia, on the ground of reasonable requirements. The defendant/petitioner herein entered appearance in the said suit and filed written statement and contesting the suit.

The petitioner submits that the plaintiffs/opposite parties admitted in the plaint that besides suit premises, he is also co-owner of 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016, which is in occupation of heirs of Sk Babu. The defendant/petitioner herein has categorically stated in the written statement that second floor of premises no. 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 is entirely in occupation of the heirs of the plaintiffs. The petitioner/defendant accordingly made a prayer for local inspection commission in respect of aforesaid premises 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 and plaintiffs/opposite parties herein filed written objection to the said application. Learned court below after hearing, was pleased to reject the said application by the order impugned.

Learned counsel for the petitioner submits that learned court below failed to understand that the order impugned if allowed, to stand would amount to failure of justice. The court below passed the impugned order violating the principles of natural justice and he has wrongly held that the application under Order 39 Rule 7 has been filed at a belated stage. He further submits that the court below failed to appreciate that the prayer for local inspection commission can be made at any stage of the suit. Accordingly, he prays for setting aside the impugned order.

On perusal of the order impugned, it appears that the learned court below was pleased to hold that neither party should be allowed to pray for local inspection commission with the object of collecting evidence but at the same time, he further observed that if the court needs assistance of a Commissioner, the court can get it inspected. He further observed in 2010 a local inspection commission was held in respect of the suit premises but it appears from the stage of the suit that the suit has already been posted for cross-examine of PW1 and accordingly, learned court below rejected the petition as the said application has been filed only to collect evidence.

I have gone through the plaint wherefrom it appears that the plaintiffs in Paragraph-4A have stated that the plaintiff's father namely Sk. Babu was the owner of the property with three storied building lying and situated at premises no. 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 where the plaintiff has his undivided share but at the same time, he has stated that said premises no. 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 is under use and occupation of the respective heirs of deceased Sk. Babu and some is occupying by the tenants and the plaintiff has no accommodation at 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016.

On perusal of the schedule of local inspection commission, it appears from the schedule of inspection that in point no. 2, the defendant/petitioner has prayed for making local inspection in respect of flat/rooms under occupation of plaintiff in the said premises 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 and in point no. 3, the defendant/petitioner has sought for measuring of flats/rooms under occupation of plaintiff in second floor and their mode of user. These two points as sought for by the petitioner/defendant in the local inspection commission if allowed, clearly would amount to fishing out evidence which is not permissible in the eye of law under the provision of Order 39 Rule 7 of the Code. However, so far as point nos. 1 and 4 are concerned, said points for inspection relate to the inspection as to number of rooms situated in the second floor of the said premises and to note local features in respect of said premises. These two points if allowed, will not amount to fishing out evidence and as such for conclusive and effective adjudication of the suit, said two points should have been allowed by the court below.

Finding above the impugned order no. 97 dated 2.2.2021 passed in Ejectment suit no. 234 of 2006 is hereby set aside. Learned court below is directed to appoint a Local inspection Commissioner for inspection only in respect of point nos. 1 and 4 of the schedule of local inspection commission, which relates to the noting

number of flats/rooms situated in the second floor of premises no. 32/1, Shariff Lane, P.S. Park Street, Kolkata- 700016 and to note the local features by the Commissioners, if any, and the prayer for commission in respect of point nos. 2 and 3 in the said premises are not allowed. Learned Commissioner will conduct the commission work in respect of point nos. 1 and 4 and will submit a report within a period of four weeks from the date of his appointment.

Learned court below will appoint the advocate commissioner and will fix remuneration of the advocate commissioner within a period of two weeks from the date of communication of the order. The cost of Commission work as would be directed by court below shall be paid by the defendant/petitioner within a period of two weeks from the date of appointment of Commissioner by the court below.

Accordingly, C.O. 970 of 2021 is disposed of.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)