

Item No. 6
17.07.2023
Court. No. 19
GB

C.O. 1384 of 2022

Susmita Bhattacharjee
Vs.
Rahul Bhattacharjee & Anr.

*Mr. Sougata Mitra,
Ms. Ankita Dey*

...for the Petitioner.

*Mr. Nitai Ch. Saha,
Mr. Abhijit Ch. Majumdar*

...for the Opposite Party.

Affidavit-of-service, filed in Court today, be kept with the record.

Having heard the learned advocates for the respective parties, this Court is of the view that the order dated May 5, 2022 passed by the learned Civil Judge (Senior Division), Sealdah in Title Suit No.81 of 2021, requires modification.

The learned court had allowed the prayer for repair of a portion of the suit property as mentioned in the schedule of the application for repair, under the supervision of an expert commissioner who would supervise and inspect the repairing work as per the schedule.

This Court is of the view that the question whether the schedule of repairing as mentioned at Page 20 of the revisional application should be allowed as a whole, without any prior inspection by the learned advocate commissioner, ought to have prevailed upon the learned court below. Thus, the proper course of action would be to appoint a learned advocate commissioner within a period of three weeks from date of communication of this order, who will cause an

inspection of the suit property in the presence of the parties in order to ascertain whether all the repairs as per item nos.1 to 7 in the first schedule was necessary to be carried out in order to make the suit property habitable. Such inspection shall be made within a period of three weeks thereafter. The learned advocate commissioner shall file a report within the time specified. The parties will be at liberty to file their objection to the report. Thereafter, the said application for repair shall be decided by the learned court below by specifying the nature of repairing which should be allowed, or whether the repair should be allowed at all. The entire matter with regard to the repair shall be disposed of within a month from the receipt of the report.

It is made clear that upon such order being passed, the learned advocate commissioner shall supervise the repair if permitted by the learned court. No party shall claim any equity in respect of the repair work and the repairs undertaken shall abide by the final decision in the suit. The entire cost for the process including the cost of commission shall be borne by the opposite parties.

An order for repair in a partition suit, during the subsistence of a status quo order, cannot be passed on the mere asking. Such orders are usually allowed under such circumstances, when during the long pendency of such suit the property, due to natural wear and tear and efflux of time, become uninhabitable. Thus, the learned advocate commissioner will see whether the entire repairing as specified in the first schedule would be required or not in

order to make the property habitable. The report should contain the minimum repair that would be necessary for the purpose. Unnecessary replacement of water pipeline and other materials should not be allowed.

Accordingly, the revisional application is disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.

(Shampa Sarkar, J.)