

17.5.2023
216
Ct. no. 652
sb

**C.O. 1654 of 2019
With
CAN 1 of 2022
With
CAN 2 of 2022**

**Sri Jawahar Baitha
Vs.
Pradip Kumar Sett & Anr.**

Mr. Sibendra Nath Chatterjee
Ms. Gargi Acharyya ...for the Petitioner

Mr. S.N. Dutta
Mr. Saikat Karmakar ...for the Opposite Parties

In Re: CAN 2 of 2022

Affidavit-in-opposition filed by the opposite party to the application for restoration is taken on record.

This is an application for condonation of delay in filing an application for restoration under Section 5 of the Limitation Act. The grounds shown in the application appears to be satisfactory and accordingly, the delay is condoned.

CAN 2 of 2022 is accordingly disposed of.

In Re: CAN 1 of 2022

Affidavit-in-opposition filed by the opposite party is taken on record.

This is an application for restoration of the application being C.O. 1654 of 2019 which was dismissed

for default on 20th September, 2019. The petitioner contended that he was not aware about the dismissal order and thereafter, from March 2020, complete lockdown started throughout India and for which she could not take steps in time. There is no intentional laches or negligence on the part of the applicant and accordingly, prayed for restoration of the application. The grounds shown in the application appears to be satisfactory and accordingly, C.O. 1654 of 2019 is restored in its original file with original number.

CAN 1 of 2022 is accordingly disposed of.

In Re: C.O. 1654 of 2019

This is an application under Article 227 of the Constitution of India which is taken up for hearing on consent given by both the parties.

In this application, the petitioner/defendant has challenged the order no. 124 dated 27.3.2019 passed by the learned Additional District Judge, 5th Bench, City Civil Court, Calcutta in Title suit no. 1023 of 2003. By the impugned order, learned court below was pleased to reject the defendant's application under Order 39 rule 7 with cost of Rs. 3,000/-.

Being aggrieved by that order, the petitioner herein contended that predecessor-in-interest of the petitioner Anganu Baitha and Chunilal Baitha (Dhobi) were jointly monthly tenants in respect of a godown situated at 11,

Ho-chi-Minch Sarani, Kolkata-700071. The petitioner along with his other covered area residing in the said premises for last 40 years as the monthly tenant in respect of the premises under the Administrator General and Official Trustees of Government of West Bengal and presently he is paying monthly rent of Rs. 120 with the office of the learned Rent Controller, Calcutta. The plaintiff/opposite parties herein are also claiming to be resident in the ground floor at the said premises as monthly tenant under the administrator General. They are not the landlords of the petitioner and they also enjoy the same status of tenant.

All of a sudden, the opposite parties by lawyer's notice dated 22. 2.2022 asked the petitioner herein to vacate the said premises and on the basis of said notice, they have filed the aforesaid suit for recovery of possession against the present petitioner. The petitioner filed written statement and denied all material allegations. He further submits that on behalf of the official trustees, one witness deposed before the court and he stated in his evidence that item no. 6 of the tenancy list shows Chunilal Baitha (Dhobi) as a tenant in respect of godown but he was unable to locate godown of Chunilal Baitha (Dhobi). Now in order to pin point the existing accommodation of the petitioner, the petitioner herein filed an application under Order XXXIX rule 7 before the court below for ascertainment of the entire

tenanted rooms of the opposite parties and the room of the defendant/petitioner left by their predecessor-in-interest, Chunilal Baitha (Dhobi). However, learned court below after hearing both the parties, was pleased to reject the said application. Learned counsel for the petitioner submits that in order to adjudicate the real controversy between the parties, the local inspection commission is very much needed and without appointment of an advocate Commissioner, the physical possession of the tenanted room of the petitioner and also the physical tenanted portion of the opposite parties cannot be ascertained.

Learned counsel for the opposite parties raised strong objection and contended that purpose of local inspection commission can never be fishing out evidence or to prove possession of either party in connection with suit property. She further submits that the evidence of both the parties have already been concluded and only to drag further proceeding of the suit and to cause delay in final disposal of the suit, he has preferred this application with mala fide intention, which is liable to be rejected. The order impugned passed by the court below is justified and does not call for any interference. In this context, he relied upon paragraph 13 of the judgment of a coordinate bench of this court passed in **Harendra Prasad Shaw & Ors. vs. Bimal Naskar reported in (2009) 2 CHN 404.**

I have considered the submissions made by both the parties. On perusal of the schedule of commission work, it appears that the petitioner has prayed for local inspection commission to ascertain the mode of accommodation available to the plaintiff on the ground floor and the mode of accommodation available to the petitioner in respect of one room and mode of user thereof on the ground floor of the said suit premises at 11, Ho-chi-Minch Sarani. It clearly reveals from the schedule of the commission work that the object of filing such application is fishing out evidence which is not permissible under the law.

Needless to say that the primary object of local inspection commission is to keep on record, the existing condition of the property, so that if the same is subjected to any change later on, any deterioration or mischief by any party or other agency, that can be known by the court, if and when desired or required.

It is not permissible for the court to appoint a Commissioner under order XXXIX rule 7 for collecting evidence in the suit, nor such commission can be used as substitute of oral or documentary evidence.

Present application for the local inspection commission filed after the recording of evidence. No attempt was made to file application since the filing of written statement. The application appears to have been filed to fill up lacuna in evidence and as such the order of

rejection passed by the court below is justified and proper and does not call for interference.

Accordingly, C.O. 1654 of 2019 is dismissed.

Learned court below is directed to make expeditious disposal of the pending suit and to conclude the entire proceeding preferably within a period of twelve weeks from the date of communication of the order.

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

(Ajoy Kumar Mukherjee, J.)