

06.12.2023
Sl. No.4(DL)
srm

C.O. No. 2239 of 2023

Poonam Dwivedi

Versus

Asha Bansal & Ors.

Mr. Shubham Gupta,
Mr. Raunak Shaw

...for the Petitioner.

Mr. Siddhartha Banerjee,
Ms. Shreya Choudhury

...for the Opposite Parties.

The revisional application arises out of an order dated June 9, 2023 passed by the learned Judge, 12th Bench, City Civil Court at Calcutta, in Ejectment Suit No.22 of 2022.

By the order impugned, the learned court below allowed an application under Order 26 Rule 9 read with Order XVIII Rule 18 of the Code of Civil Procedure. Sri Ranosurja Sarkar was appointed as an Engineer Commissioner, to conduct the commission work upon notice to both the sides and to submit the report before the court as per the application dated January 6, 2023 filed by the plaintiffs.

Mr. Gupta, learned Advocate appearing on behalf of the petitioner submits that the order suffers from the following irregularities:-

- (a) No reasons had been assigned as to why an Engineer Commissioner was required to be appointed for the commission work.
- (b) The objections raised by the petitioner had not been taken into account by the learned court below.
- (c) The grounds for commission were vague, irrelevant and meant to fish out evidence.
- (d) The order impugned was passed without proper application of mind and without considering the plaint case.

Mr. Siddhartha Banerjee, learned Advocate appearing on behalf of the plaintiffs/opposite parties submits that the ground for eviction is MOP and, as such, unless an Engineer Commissioner inspects and files a report, it would not be possible for the plaintiffs to prove the damage caused to the property due to the construction made by the defendant. Mr. Banerjee further submits that the petitioners always have a right to cross-examine the Commissioner. Hence, there should not be any reason to disallow such commission.

Having considered the submissions of learned Advocates for the respective parties, this Court agrees with Mr. Gupta, that the grounds for commission are vague and not specific. However, considering the plaint case, it appears that

an allegation has been made in paragraph 8 thereof, that the defendant, without any written consent and permission from the plaintiffs had illegally and wrongfully made material additions, alternations and substantial changes in the said premises. A mezzanine floor was constructed inside the said premises and the floors and wall of the suit property suffered serious damage. The plaintiffs had valued the quantum of damage at Rs.1,50,000/- and also stated that the said amount should be payable by the defendant as compensation for the damage caused.

Under such circumstances, this Court is of the view that unless an Engineer Commissioner is appointed in order to assess the correctness of contentions of the plaintiffs, the plaintiffs would not be in a position to prove the plaint case. Thus, this Court is of the view that the Engineer Commissioner must be appointed in order to assess the correctness of the statements made by the plaintiffs in the suit.

Under such circumstances, the points for commission are framed by this Court upon modification of the order of the learned court below. The commission shall be held on the following:-

- (a) Whether a mezzanine floor was constructed inside the suit premises after 1995, i.e., after the defendant

had been inducted in the property, and if so, the age of such construction.

(b) Whether such construction had caused any damage to the walls and the floors of the premises which is the subject matter of the suit. Photographs of the mezzanine floor and the state of the walls and the floors of the tenanted portion.

It is made clear, that such commission will be held upon notice to the parties. The parties shall cooperate with the Engineer Commissioner. When the photographs are taken, suggestions of each of the parties shall also be noted.

The learned court below is directed to modify the writ in accordance with the order passed herein, on the basis of server copy of this order.

It is made clear that if any date of commission has been fixed, the same is set aside.

With the above observations, the revisional application is disposed of. The order impugned is modified.

There shall be no order as to costs.

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

(Shampa Sarkar, J.)