

S/L 26
20.02.2023
Court. No. 12
Swayan

CO 1973 of 2021

**Ardhendu Sekhar Mondal alias
Ardhendu Mondal & Ors.**

**Vs.
N. Sarda**

Mr. Pinaki Ranjan Mitra

...for the petitioners.

*Mr. Falguni Bandyopadhyay
Ms. Riya Ballar*

...for the opposite party.

Both the parties are represented by their respective learned Advocates.

The instant revisional application is now taken up for hearing. Heard learned Advocates for the contending parties at length.

The present revisional application is now taken up for passing appropriate order.

In this revisional application as filed under Article 227 of the Constitution of India the order dated 16.09.2021 as passed in Title suit No. 731 of 2020 by the learned Civil Judge (Junior Division), 6th Court, Howrah has been assailed. By the impugned order learned Trial Court in a suit for eviction of a tenant under West Bengal Premises Tenancy Act, 1997 has been pleased to dismiss the plaintiffs' application for local inspection as filed under Order 39 Rule 7 of the Code of Civil Procedure on contest. The plaintiffs felt aggrieved and, thus, preferred the instant revisional application.

In support of the instant revisional application, Mr. Mitra, learned Advocate for the plaintiffs/revisionists at

the very outset draws attention to this Court to the photocopy of the plaint as filed in Title Suit No. 731 of 2020, photocopy of the petition for local inspection as has been rejected by the learned Trial Court by the impugned order and the certified copy of the impugned order itself. It is contended that learned Trial Court while passing the impugned order failed to visualise that in a suit for eviction of a tenant under the provisions of West Bengal Premises Tenancy Act, 1997 hereinafter referred to as the 'said Act' on the ground of reasonable requirement local inspection of the suit premises by an Advocate Commissioner is practically a must. Mr. Mitra, learned Advocate, thus submits that learned Trial Court while passing the impugned order failed to visualise that true implication of Order 39 Rule 7 of the Code of Civil Procedure and, thus, passed a wrong order which is not sustainable in the eye of law.

Mr. Bandyopadhyay, learned Advocate for the defendant/opposite party, however, contended that learned Trial Court rightly passed the impugned order since on perusal of the petition for inspection it would reveal that such petition for inspection was filed before the learned Trial Court to fish out the evidence which is not permissible in the eye of law.

This Court has meticulously gone through the photocopy of the plaint as filed before the learned Trial Court, photocopy of the petition for inspection as filed under Order 39 Rule 7 of the Code of Civil Procedure and impugned order itself.

This Court has also given its due consideration over the submissions of the learned Advocates for both parties.

On perusal of the entire materials as placed before this Court, it appears that admittedly before the learned Trial Court Title Suit No. 731 of 2020 was instituted for eviction of the defendant/opposite party under the provisions of the said Act of 1997 on the ground of reasonable requirement along with other grounds. In order to get a clear picture as to whether the plaintiffs of Title Suit No. 731 of 2020 at all reasonable require the suit properties or not, local inspection is very much necessary. On perusal of the petition for inspection as filed before the learned Trial Court it appears to this Court that an endeavor has made by the plaintiffs for inspection of the suit properties by appointing an Advocate Commissioner to note some features in respect of the suit holding namely, the numbers of rooms available in the suit holding, the manner of its use as well as the nature and condition of the suit premises apart from other local features as would be pointed out by the parties at the time of holding commission.

In considered view of this Court, the prayer as made by the plaintiffs before the learned Trial Court for local inspection is innocuous one and if the same is allowed that would help the learned Trial Court to adjudicate the real point of controversy as involved in the said suit.

In view of the discussion made herein above, this Court finds sufficient merits in the instant revisional application and accordingly the instant revisional application being CO 1973 of 2021 is hereby allowed.

Consequently, the impugned order dated 16.09.2021 as passed in Title Suit No. 731 of 2020 by the aforementioned Trial Court stands hereby set aside.

Consequently, the petition under Order 39 Rule 7 read with Section 151 of the Code of Civil Procedure for appointment of an Advocate Commissioner for holding local inspection of the property as filed before the learned Trial Court on 03.09.2021 stands hereby allowed on contest. Learned Trial Court is hereby directed to issue writ of commission in the name of an Advocate Commissioner to note down the features and/or points as mentioned in the said petition for commission on deposit of the requisite fees for commission by the plaintiffs/revisionists herein. It is further directed that the commission work as indicated above shall have to be conducted in *de-die-in-diem* manner, that is, on day to day basis and the report of the commission shall have to be submitted before the learned Trial Court within a month from the date of communication of this order.

Department is hereby directed to transmit the Lower Court Record along with a copy of this order within a week by a special messenger and the cost of such sending such special messenger is to be borne by the plaintiffs/revisionists herein.

Parties to act on the server copies of this order.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J.)