

11.01.2023
Item No.6
Ct. No.7
CHC
(disposed of)

C.O. 2464 of 2022

**Sri Sanjay Sachdev
Vs.
Deepak Thadani**

Mr. Kallol Basu,
Mr. Chandra Sekher Banerjee,
Mr. Nilanjan Pal,
Mr. Shamit Dutta

...for the petitioner

Mr. Aniruddha Chatterjee,
Mr. Avirup Chatterjee,
Mr. Soumo Roy

...for the opposite party

Rejection of prayer for local inspection proposed by the defendant/petitioner is under challenge in this case.

Adverting to paragraphs 14 and 15, Mr. Basu, learned advocate appearing for the petitioner submits that though there has been disclosure of admission made in the aforesaid averment of the plaint, but the complete particulars including its specification and the area under possession of the opposite party, have not been disclosed, and as a result of which, an inspection is felt necessary to reveal the extent of suitable accommodation, allegedly held by the opposite party/plaintiff in a suit for eviction.

The proposed schedule of inspection is brought to the notice of the court below, which may be set out as hereinbelow:-

“a) To take measurement and note the Flat of the Nisha Thadani i.e. show room use situate on the Ground floor of premises No.234/F, Panchanna Gram, P.O. & P.S. Tiljala, Kolkata – 700039.

b) To take note and measurement in respect of entire flat on the First floor of premises No.7, A.J.C. Bose Road, Kolkata – 700017.

c) Such other feature or features as may be pointed out by the learned Advocate of the parties at the time of holding commission.”

Incidentally, it is submitted by Mr. Basu that the court below has already allowed a prayer for local inspection proposed by the opposite party/plaintiff by order dated 6th June, 2022.

It is thus submitted by Mr. Basu that if the proposed local inspection is held on the points mentioned in the schedule to the petition, there will be no prejudice caused to the opposite party, and there may be fair adjudication of the controversy surfaced at the moment between the parties.

Per contra, Mr. Aniruddha Chatterjee, referring the objection submitted against the petition for local

inspection submits that in paragraph 5 of such objection petition, the points sought to be inspected, have been admitted in an unambiguous terms leaving behind no ambiguity therein.

The relevant paragraph of written objection is set out hereinbelow:-

“5. With reference to the allegations contained in paragraphs 3 to 6 including the Schedule of the said application are false and denied. Your petitioner states that flat measuring an area of 350 sq. ft. situate and lying on the ground floor at premises no.234/F, Panchanna Gram, P.S. & P.O.- Tiljala, Kolkata – 700039 wherein the wife of the plaintiff is carrying on her business as a licensee for a temporary period under Sri Arindam Bhowmick and Sri Nilotpai Bhowmick. Your petitioner further states that the plaintiff and his family members including his elder brother’s family are residing on the first floor of Premises no.7, A.J.C. Bose Road, Kolkata-700 007 as a monthly tenant at a rental of Rs.2,500/- payable according to English calendar month and the said tenancy is standing in the name of his elder brother Sri Ravi Thadani. Your petitioner states that the points for commission mentioned in the said application cannot be allowed since the properties as mentioned in the

schedule of the said application are not own property of the plaintiff and the tenanted portion cannot be allowed for inspection as such the said application is liable to be rejected.”

Mr. Chatterjee, further draws attention of paragraphs 12 and 15 of the plaint, wherein the opposite party/plaintiff has disclosed the extent of accommodation available there.

It is thus submitted by Mr. Chatterjee that whenever there is specific admission disclosed in the objection petition filed by the opposite party, there is no need of local inspection, because the admission itself will amount to a strong proof, which may be utilized in accordance with the law, for the fair decision of this case.

Having considered the submission of both sides, it appears that this Court is to address an issue already crystalized is whether a fresh local inspection in terms of the points, proposed by the petitioner/defendant is at all necessary, bearing in mind that disclosure of admission, made in the written objection filed by the opposite party/plaintiff in the written objection against the prayer for local inspection, proposed by the petitioner/defendant. Admission of a fact, no doubt is a good piece of

evidence, which need not be proved. The extent of accommodation together with its suitability of accommodation, as disclosed in the objection petition may be a mixed question of fact and law, which may be best decided after holding a trial with collection of evidence. It is thus left to be decided by the court below at the appropriate time of trial. Petitioner has every right to challenge the suitability of the accommodation, irrespective of the disclosure of admission made in the objection petition, filed by the opposite party/plaintiff in his objection petition. The objection thus raised as to the extent of availability of suitable accommodation may thus be resolved by the court below providing opportunity of hearing to both the parties.

The court while deciding the suitability and extent of available accommodation, as disclosed in the objection petition, may be decided independently in view of the evidence adduced, irrespective of the findings reached in the order dated 10th June, 2022.

With this observation/direction the instant revisional application stands disposed of.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)