

**IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Biswaroop Chowdhury

C.O. 3676 of 2022

Sukumar Dutta & Anr.

Vs.

Shankar Manna & Ors.

For the petitioners	:	Mr. Sukanto Chakraborty Mr. Zubir Ahmed
For the opposite party	:	Mr. Surya Prasad Chattopadhyay Mr. Abir Lal Banerjee Mr. Ankit Chatterjee
Last Heard on	:	12.12.2023
Delivered on	:	22.12.2023

Biswaroop Chowdhury, J:

The petitioners before this Court are defendants in a Title Suit for khas possession and is aggrieved by the order dated 10.11.2022 passed by Learned Civil Judge (Junior Division) Additional Court, Serampore in T.S No.72916 of 2017 rejecting the prayer of the petitioners under Section 151 C.P.C for causing repair at the suit property.

The case of the petitioners/defendant No.1 and 4 in the Learned Court below may be summed up thus:-

1. The defendant No.1 along with his family members including the defendant No.4 has been residing in the suit premises since long and during his stay the Defendant No.1 has previously made some construction as well as repairing work over the suit premises.
2. That since filing of the instant suit no repairing work has been done within the suit premises and due to rainy seasons in past few years and mainly after the Amphan Cyclone all the rooms of the suit premises have become damaged and the said rooms within the 'A' schedule property requires urgent repairing works in respect of the Bengal Style 'Kore-Barga' roof of the same from the inside by changing the 'Barga' (wooden logs) which have become damaged as well as from the outside with cemented plastering work as during heavy fall of rain, the rain water is percolating from the ceiling of the said rooms and it is hampering the daily life of the Defendant No.1 as well as his family members within the said premises. The percolated water has gotten soaked in the walls of the said premises and for that reason the walls of the said premises also need repairing work by plastering. The bad conditions of the rooms of the suit premises has already been admitted by the plaintiff No.1(c) in his cross examination.

3. The defendant No.1 as well as his family members including the Defendant No.4 is suffering tremendously on a regular basis and there is chance that the premises may become more dilapidated and if no repairing work is done, the Defendant No.1 may suffer from huge loss and injury and for that reason the Defendant No.1 would like to proceed with some repairing work/patch work of the roof of the suit premises by changing the Barga (wooden logs) from the inside of the rooms as well as by plastering work from the roof of the rooms and also some repairing work in respect of the walls of the rooms with the permission of the Learned Court as per the schedule furnished.

The opposite parties filed objection to the petition for repairs filed by the petitioners. According to the opposite parties the petition under Section 151 of the Code of Civil Procedure for repairing the schedule suit property is nothing but the devices to delay the proceedings and the petition is not maintainable. It is contended by the opposite parties that Amphan Cyclone's land fall was on 20th May, 2020 and as such the damages of the rooms have been done within 25th May, 2020 but since 25th May, 2020 the petitioners have not taken any plea regarding the damages. It is further contended by the opposite parties that there is no report of civil engineer regarding proposed repairing and damages suffered. It is also contended that the petitioners have not been able to prove the damages suffered by them.

By order No.56 dated 10.11.2022 Learned Trial Court was pleased to reject the application of the petitioners under Section 151 C.P.C for repair of the suit premises.

The petitioners being aggrieved by the order dated 10.11.2022 passed by the Learned Trial Court has come up with the present application.

It is the contention of the petitioner that the Learned Judge in the court below acted illegally and with material irregularity thereby not considering that the petitioners are living in the suit premises for more than 40 – 45 years at a stretch. It is further contended that the Learned Judge in the court below should have considered the fact that the building is in dilapidated condition and if no repairing work is done then the roof of the said building may collapse. It is also contended that the Learned Court below should have considered the fact that the plaintiff No.1 being P.W 1 admitted in his cross examination the poor condition of suit building which requires repairing.

Heard Learned Advocate for the petitioner, and Learned Advocate for the opposite parties perused the petition filed and materials on record.

Learned Advocate for the petitioners submits that the suit building is an old dilapidated building which requires repair and the said fact is admitted by P.W.1 in his cross-examination. Learned Advocate for the

opposite parties submits that the intention of the petitioners in moving such petition for repairs is to delay the suit. It is further submitted by the Learned Advocate that although Amphan took place on May 2020 the petitioners have filed application for repairs in the year 2022. It is also submitted that the photos relied upon by the petitioners in this petition was not placed before the trial court.

Before entering into merits of the matter it is to be kept in mind that it is the basic right of every person to live in a house peacefully, comfortably and safely. A property may be subject matter of dispute where proceedings are pending in Court but so long persons are occupying the said property/building first of all the said property has to be preserved in accordance with law, secondly the persons residing in the said property cannot be compelled to live in an unsafe condition where there is reasonable apprehension of risk and damage. As a person cannot be evicted from a property save and except by due process of law similarly a person while residing in a particular building cannot be compelled to reside with risks and he has right to take steps with regard to the said building for his own comfort and safety at his own costs which will be without prejudice to the subject matter of dispute if pending in Court. As it is provided in different Laws of Tenancy about the obligation of Landlord to carry out necessary urgent repairs of the tenanted premises, the same principles apply in case of occupation of premises in other capacities but the difference is that cost of repairs is to

be paid by the occupants. Now whether a building requires urgent repairs is to be ascertained from the condition of building on receiving report from Commissioner. The issue of urgent repairs should be given priority even if the suit is pending for a long period. In the instant matter as it has come in the cross-examination of P.W.1 regarding condition of the building, the Learned Judge ought to have appointed a Commissioner and obtained report of the condition of building. In the facts and circumstances an Advocate Commissioner should be appointed to cause inspection of the suit premises and submit report to the Learned Trial Court. The Learned Trial court upon considering the said report should reconsider the application for repairs.

Hence Ms. Smita Pal Learned Advocate of this Court having Ph. No.9836738604 is appointed Advocate Commissioner. Learned Commissioner shall cause an inspection of suit premises and specifically enquire with regard to the contentions made in paragraph-4 of the petition under Section 151 C.P.C. Learned Commissioner shall take photographs of the walls and those portions of the rooms as specified in paragraph-4 of the petition. Learned Commissioner upon causing inspection if thinks fit may take the assistance and opinion of a Registered/Panel Engineer of any Municipality before preparing the final report. Upon preparing the final report the Learned Commissioner shall submit the same before Learned Trial Court within 3 weeks from reopening of Trial Court after winter vacation. Learned Commissioner

shall be entitled to a remuneration of Rs. 7,000/- (Rupees Seven thousand only) to be paid by the petitioners. The fees of Engineer, cost of Photographer, transport cost and incidental cost shall also be paid by the petitioners.

The Learned Commissioner shall cause inspection upon notice to all parties and their Learned Advocates. The petitioners shall serve copy of the application under Section 151 C.P.C as well as copy of the plaint upon the Learned Commissioner for necessary steps.

Hence this Revisional Application stands allowed. Order dated 10.11.2022 passed by Learned Civil Judge (Senior Division) Additional Court, Serampore in T.S No.72916 of 2017 is set aside. The application under Section 151 C.P.C filed by the petitioners is remitted back to the Learned Judge to reconsider and decide the same upon submission of Commissioner's Report as observed above.

[Biswaroop Chowdhury, J]