

Item No.26
13.03.2024
Court. No. 19
GB

C.O. 516 of 2024

Sri Sujay Basu
Vs.
Sri Barun Kumar Panja & Anr.

Mr. Amrita Lal Dhar,
Ms. Reema Coomar

...for the Petitioner.

Mr. Tarak Nath Halder

...for the Opposite Parties.

1. The order dated December 4, 2023, passed by the learned Civil Judge (Junior Division), 2nd Court at Serampore in Title Suit No.72846 of 2017 is under challenge before this Court. The petitioner prayed for repair. The learned court had rejected an application under Section 151 of the Code of Civil Procedure. The court held that on scrutiny of the records, it reflected that it was not possible for the court to determine the actual condition of the repair to be undertaken.
2. In my opinion, if the court was of the view that it was not possible for the court to decide whether a repair was required to be undertaken or not, proper course for the court would have been to appoint an advocate commissioner to conduct a local inspection to ascertain whether the repairs as prayed for by the defendant in the suit was at all required for the day to day living and safety of the defendant.

3. Undoubtedly, the defendant has a right to reside in the premises till he is evicted by due process of law. The suit is also at the stage of evidence.
4. Mr. Halder, learned advocate appearing on behalf of the landlord submits that at the fag end of the suit, sudden plea had been taken with regard to the repair. This was a ploy, only to stall the proceedings. A shutter is not required to be installed as the safety and security of the petitioner is not compromised. The petitioner resides on the top floor. It is further stated that the pipeline has been damaged by the petitioner himself and the day to day living of the petitioner is not affected.
5. I find from the application which has been filed by the petitioner, that specific allegation had been made that the landlord had broken the shutter which had made entry and exit of the outsiders to the property, easy. The privacy and safety of the petitioner was jeopardized. Secondly, the water pipeline was used for drainage of excess water from the roof. Such pipeline having been broken, resulted in seepage of rainwater into the premises occupied by the petitioner.
6. Under such circumstances, this Court directs the learned trial judge to appoint an advocate commissioner. No further application praying for such appointment would be necessary, but the petitioner will approach the learned court with an application only for naming the learned commissioner in this

regard and for fixing the remuneration. The cost of such inspection shall be borne jointly by the parties as the landlord is resisting the repair.

7. The local inspection report shall indicate as follows:-
 - a) Whether any shutter or a gate or some kind of protection would be required to be installed in place where such shutter had originally been fixed, to protect the privacy and safety of the petitioner.
 - b) Whether on account of removal of the rainwater pipe from the terrace, the chances of seepage of rainwater into the roof of the premises occupied by the petitioner, had increased.
8. The report shall be filed within the date to be fixed by the learned court. The remuneration also shall be fixed by the learned court. On the basis of the report, and the if same is in favour of the petitioner, the learned court shall pass necessary orders accordingly. The hearing of the suit shall be expedited.
9. Accordingly, the revisional application is disposed of.
10. All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)