

03.10.2024
Item No.16
BR

CO 533 of 2024

Sri Pintu Sahw @ Shaw and another

-vs-

Sri Bimal Acherjee @ De and another

Mr. Gunjan Shah,
Ms. Shreya Agarwal
... for the petitioners

1. The present civil revision has been preferred against an order dated 03.01.2024 passed by the Court of learned Civil Judge (Junior Division), 1st Court at Barasat, District- 24 Parganas (North) in Title Suit No. 1095 of 2022.
2. By the said order, the learned Trial Court held as follows:-

“.....Ld. Lawyers on behalf of both sides are present. On submissions of both sides the petition dated 02.08.2023 is taken up for hearing.

Ld. Lawyer on behalf of the plaintiffs by filing a petition dated 02.08.2023 submitted that the roof and dolma structure of the occupied portion of the plaintiffs in the suit schedule property

is in a dilapidated condition and needs to be replaced by tin with iron rod structure and some other ancillary repair works also to be done.

The Ld. Lawyer of the defendants raised strong objection by stating that it cannot be ascertained from the schedule of the petition that which portion is being occupied by the plaintiffs and the picture is not clear as to the extent and scope of repair and thereby the petition is liable to be rejected.

Having heard both sides this Court is of the opinion that without a clear schedule describing the area of and volume of repair works to be done by the plaintiffs the petition cannot be allowed.

Hence, it is

ORDERED

that the instant petition dated 02.08.2023 is hereby rejected on contest but without any order as to costs and thus the petition is disposed of.

Ad-interim order of injunction is extended as prayed for.....”

- 3. Hence the civil revision** praying for setting aside of the order under revision and also praying for leave to repair the roof and dalma structure of the portion in possession, of the petitioners in the suit schedule property, by replacing the broken tiled shed and dalma by color tin with iron rod structure and to do the other works as needed for making the

occupied portion of the petitioners habitable as stated in the schedule of the said application.

4. On hearing the learned counsel for the plaintiffs/petitioners in the absence of the respondents who have failed to appear in spite of due service and considering the materials on record, including the order under revision, it appears that at the time when the prayer of the plaintiffs/petitioners for repairs was considered by the Court on 3.1.2024, the defendants/respondents had only objected to the fact, that there was “no schedule” to the petitioners application to ascertain as to which portion is in the occupation of the plaintiffs. The Trial Court being of the opinion that without a clear schedule the plaintiffs prayer could not be allowed, rejected the application.

5. **Living in a ‘habitable’ residential house is a basic necessity. A person is**

entitled to live under a roof, which does not leak, a house which is strong enough to protect him, his family and his properties.

6. This Court finds that the trial Court did not consider the prayer of the plaintiffs/petitioners for repairs on the ground that there was no proper schedule or description for repairs.
7. This Court is of the view that the Trial Judge was wrong in not directing a local inspection to be conducted as per Order 39 Rule 7 Civil Procedure Code, so as to ascertain the actual condition of the suit property and also as to the area which is prima facie is in possession of the petitioners and also the respondents.
8. In such a case where repairs have been prayed for of a respective portion, it is mandatory that a local inspection under Order 39 Rule 7 Civil Procedure Code is held and on the basis of such report, the

Court is armed appropriately to pass necessary orders.

9. Accordingly, the civil revision is disposed of by setting aside the order under revision and directing the Trial Court to pass an order directing a local inspection under Order 39 Rule 7 Civil Procedure Code and the report as discussed above be called for, from the learned advocate conducting the inspection in accordance with law.
10. And on receiving the local inspection report which is to be conducted in presence of both parties, the Court on hearing both parties shall decide the prayer of the plaintiffs/petitioners which is urgent in nature within a period of two months from the date of this order.
11. **The civil revision is accordingly disposed of.**
12. All connected applications, if any stand disposed of.
13. Interim order, if any, stands vacated.

- 14.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously after due compliance.

(Shampa Dutt (Paul), J.)