

5.4.2024
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Ct. no. 652
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**CO 1310 of 2023
(Assigned Matter)**

**Smt. Sukhpal Kaur
Vs.
Mr. Partha Dan**

Ms. Soma Kar Ghosh
Mr. Sanjoy Kumar Ghosh ...for the Petitioner

Mr. Mahendra Prasad Gupta
Mr. Shamik Bagchi
...for the Opposite party

The opposite party/plaintiff herein filed a suit for eviction and mesne profit being Ejectment suit no. 6 of 2021 on the ground of default in payment of rent and reasonable requirement. It is alleged by the petitioner that the opposite party/plaintiff being the landlord had not undertaken any repair work in the suit property and consequently the beam of the ceiling and the plaster of the wall are completely damaged and are almost on the verge of collapse. In such circumstances, the petitioner proceeded to file an application under Section 35 of the West Bengal Premises Tenancy Act, 1997 for permitting the petitioner to effect necessary repair work in the suit property.

The opposite party filed written objection to such application contending that the petitioner is a trespasser in respect of the suit property and that she is defaulter in payment of rent and her tenancy has

already been determined since it has been surrendered. The petitioner also filed an application for local inspection commission under Order XXXIX rule 7 of the Code of Civil Procedure to show the dilapidated condition of the suit premises. The opposite party/plaintiff also filed objection opposing the said application for local inspection commission on the ground that the same is not maintainable and by filing petitions one after another the petitioner/defendant is trying to drag the final hearing of the suit.

Learned court below while taken up both the applications, was pleased to reject both the applications by the order impugned.

Being aggrieved by that order, the petitioner herein submits that the learned court below ought to have allowed the application for local inspection commission in order to bring the topography of the suit premises. The court below ought to have considered that the survival of the petitioner in the said premises is likely to be endangered. The court below was erred in observing that the petition for local inspection commission, if allowed, it will amount to fishing out evidence. On the contrary, if the prayer for local inspection commission was allowed, the dilapidated condition of the said premises could have been brought before the court. Accordingly, the petitioner has prayed for setting aside the order impugned.

Learned counsel for the opposite party raised strong objection contending that the petitioner/tenant has already surrendered his tenancy and presently, she is occupying the said property as a trespasser and as such she does not have any right to enforce either to make repair of the suit premises or to bring the topography of the suit property before the court by way of local inspection commission. The prayer is frivolous and not at all required for adjudication of the real dispute between the parties and as such, the court below was justified in rejecting both the applications and the order impugned does not call for interference by this court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made by both the parties. Before going to the further details, let me reproduce Section 35 of the West Bengal Premises Tenancy Act, 1997, which reads as follows:

“35. Making of repair and taking of measures for maintenance of essential service.

(1) If the landlord neglects or fails to make tenantable repair of the premises or to take measures for due maintenance of essential supply or service comprised in the tenancy, the Controller shall, on application made to him by the tenant in possession of the premises, cause a notice to be served in the prescribed manner on the landlord requiring him to make such repair or take such measures for due maintenance therein of the essential supply or service.

(2) If after the service of notice under sub-section (1), the landlord fails to show proper cause or neglects to make such repair or to take, within reasonable time, such measures, as the case may be, the tenant may submit to the Controller an estimate of the cost of such repair or measures with application for permission to make such repair or take such measures himself, and thereupon the Controller may, after giving the landlord an opportunity of being heard and after considering such

estimate and making such inquiries as may be considered necessary, by order in writing, permit the tenant to make such repair or take such measures at such cost as may be specified in the order.

Explanation. - "Essential supply or service" shall have the same meaning as in Explanation I to sub-section (5) of section 27."

In the present context, it appears that the procedure prescribed under Section 35 of the Act of 1997 has not been followed and as such I find nothing to interfere with the observation of the Trial court regarding rejection of the petitioner's prayer for permission for repairing of the suit property. Since the prayer for repair of the suit property was not entertainable, the question of allowing the application under Order XXXIX rule 7 of the local inspection commission has also become redundant.

C.O. 1310 of 2023 is accordingly dismissed.

However, this order will not preclude petitioner to approach before the appropriate authority under relevant law after serving copy to the landlord. In the event of making any such application before the competent Authority, he will dispose of such application at the earliest, in accordance with law, without being influenced by any observation made herein.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)