

08.04.2024
Sl. No.7(DL)
srm

C.O. No. 1833 of 2022
Mrinal Kanti Mukherjee
Versus
Sri Madan Mohan Saha

Mr. Mrinal Kanti Mukherjee
..... Petitioner (in-person).

Mr. Indrajit Biswas,
Mr. Arijit Gupta
...for the Opposite Party.

1. The revisional application arises out of an order dated November 3, 2017 passed by the learned Civil Judge (Junior Division), 2nd Court at Sealdah, in Ejectment Suit No.163 of 2010.
2. By the order impugned, the learned court rejected an application under Order XXXIX Rule 7 of the Code of Civil Procedure.
3. The petitioner appears in person and submits that the suit was filed for eviction of a tenant on the ground of reasonable requirement.
4. It has been held by a catena of decisions that the landlord was entitled to pray for local inspection, for ascertainment of the actual requirement of the plaintiff/landlord and the available accommodation in

the occupation of a tenant. Those were necessary to be brought on record.

5. The earlier order for local inspection could not be carried out by the learned Commissioner in view of the mistake in the address. The Commissioner returned a report indicating that the address in the petition and the writ should be corrected. Accordingly, the plaintiff corrected the address in the plaint by amending the same and the amendment was allowed. Thus, the incorrect address was rectified.
6. Thereafter, another application was filed by the petitioner, praying for appointment of a Commissioner. The learned court was of the view that when an earlier order for appointment of Commissioner was allowed and the report was not challenged, the second application could not be allowed. The Court held that as there was no objection to the Commissioner's report, it would be presumed that the plaintiff was satisfied with the report of the Commissioner.
7. The learned Advocate for the opposite party/defendant submits that the Commissioner was already appointed and he was not discharged. Thus, the second application was not necessary.

8. I do not find from the order impugned, that the learned court was of the view that as the Commissioner had not been discharged, the second application was not maintainable, the commission could again be held.
9. I find that the learned court had erred in holding that when the Commissioner had filed a report pursuant to the first application for local inspection and the report was accepted by the plaintiff, no further prayer seeking local inspection could be allowed.
10. The learned court has failed to consider the Commissioner's report which stated that the commission could not be held because the address of the premises had not been correctly mentioned either in the petition or in the writ. As the address of the premises was incorrect, plaint was amended. The learned court allowed the amendment of the plaint. Thus, the Commissioner's report would not debar the plaintiff from renewing the prayer for local inspection.
11. The Commissioner did not file any report upon holding commission. The earlier application has worked out its utility. The Commissioner expressed his inability to identify the premises in view of the incorrect address in the petition and in the writ. Upon correction of such error

with regard to the address of the premises, the plaintiff rightly renewed the prayer.

12. Under such circumstances, the order impugned is set aside.

13. The prayer for local inspection is allowed.

14. Sri Manabendra Pal who was already appointed by the learned court as the learned Advocate-Commissioner shall carry out the commission. The learned court shall take steps for issuance of a fresh writ with the corrected address. The local inspection shall be held on the following points:-

- (1) Existing accommodation of the plaintiff for parking his vehicle and/or garage space in and around his residence.
- (2) Existing accommodation of the defendant.
- (3) Whether the defendant owned any vehicle which was parked in any garage or empty space in the premises.

15. The entire exercise by the learned court and the Commissioner, should be completed within a month from the date of communication of this order. Thereafter, the suit shall be expedited and disposed within a year.

16. The revisional application is, thus, disposed of.

17. There shall be no order as to costs.

18. Parties are to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)