

05.02.2024
Court No. 19
Item No.09
CP

C.O. No. 2238 of 2023

Harinder Mehta
Vs.
Asha Bansal & Ors.

Mr. Shubham Gupta
Mr. Raunak Shaw
Mr. Satyabrata Das

.....for the petitioner.

Mr. Meghnad Dutta
Ms. Shreya Choudhary

.....for the opposite parties.

The revisional application has been filed challenging an order dated May 19, 2023, passed by the learned Judge, 12th Bench, City Civil Court at Calcutta, in Ejectment Suit No. 33 of 2022. The learned Court appointed an engineer commissioner to hold an investigation.

The case of the petitioner/defendant is that a wooden loft and the water reservoir (temporary in nature) were pre-existing, when the defendant was inducted as a tenant. The points for commission amounts to fishing out evidence.

Mr. Dutta, learned advocate for the opposite parties/plaintiffs denies such facts and submits that the tenant, after being inducted, had damaged the suit property by constructing the concrete loft and

the water reservoir, which was permanent in nature. Such permanent damage, led to filing of the suit.

As this is a suit for eviction on the ground of MOP of the Transfer of Property Act, a commission work is necessary and a report would be required for complete adjudication.

This court agrees with the learned court below, with regard to the directions for holding a commission. However, the points for commission ought to have been clarified by the learned court below. Thus, the question whether there was any construction of a water reservoir which had damaged the condition of the property, has to emerge from the report to be prepared and filed by the engineer commissioner. Of course, the parties can always object to such report and also cross-examine the commissioner.

Under such circumstances, the points for commission are framed by this court upon modification of the order of the learned court below.

The points for commission will be as follows:-

- a) Whether any concrete loft and a water reservoir were constructed inside the suit premises.
- b) The age of such construction in order to ascertain the approximate period

when such construction had taken place.

- c) Whether the construction had in anyway damaged the walls and floors and condition of the suit premises.

Photographs of the concrete loft and the water reservoir, the floors, wall etc. of the suit premises, shall be attached to the report.

The commission shall be held upon notice to the parties. The parties shall also cooperate with the engineer commissioner. When the photographs are taken, the suggestion of the parties shall also be noted.

The commission work will be completed within two months from the date of issuance of the writ by the learned court, upon the learned engineer commissioner. Minutes of the inspection shall be prepared by the engineer commissioner and he shall record the contentions of the parties.

The pending applications filed by the defendant shall be disposed of expeditiously, and strictly in accordance with law.

The revisional application is accordingly disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)