

24.07.2024
(D/L-20 & 22)
Ct.-19
(Susanta)

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

C.O. 2544 of 2024

With

C.O. 2546 of 2024

JIS University

-Vs-

Bajoria Finance Private Limited & Ors.

Mr. Saptangshu Basu, Sr. Adv.,
Mr. Sushovit Dutt Majumder,
Mr. Shuvashish Sengupta,
Mr. Sarojit Dasgupta,
Mr. Vikramjit Mullick,
Mr. Souvik Ganguly,
Ms. Mini Agarwal, ... For the Petitioner.

Mr. Aniruddha Chattrjee,
Mr. Debjit Mukherjee,
Mr. Surya Prasad Chattopadhyay,
Mr. Arjun Samanta,
Mr. Trishtrya Mukherji, For the Opposite Parties.

The issues involved in these two revisional applications are intermingled, as such, are taken up for analogous hearing and disposal.

The defendants in a suit for declaration of title and other consequential reliefs are the petitioners of both the revisional applications.

The part of the order dated June 07, 2024 passed by the 4th Court of learned Civil Judge (Junior Division), Howrah in the said suit being Title Suit no. 743 of 2024 is the subject matter of challenge in C.O. 2546 of 2024 and the order no. 7 dated July 08, 2024 is the subject matter of challenge in C.O. 2544 of 2024.

The learned Trial Judge by the order impugned in C.O. 2546 of 2024 has allowed an application filed by the plaintiffs under Order XXXIX Rule 7 of the Code of Civil Procedure *ex- parte* thereby appointing an Advocate Commissioner to hold a local inspection of the suit property on the points mentioned in the said application and by the order dated July 08, 2024 has dismissed an

application filed by the petitioners for recalling of the order of appointment of the Advocate Commissioner.

Mr. Basu, learned Senior advocate for the petitioners submits that the application for appointment of an Advocate Commissioner was allowed *ex-parte* even before the service of summons and without affording an opportunity to the defendants to contest the said application. He further submits that such local inspection is not necessary.

Mr. Aniruddha Chatterjee, learned advocate for the opposite parties, on the other hand, submits that Order XXXIX Rule 8 of the Code of Civil Procedure vests jurisdiction upon the Court to issue *ex-parte* writ of commission as such, the learned Trial Judge, considering the urgency of the matter, has exercised his such power to appoint the Advocate Commissioner *ex-parte*, therefore, according to him, there is no illegality and/or infirmity in the said order of appointment.

Heard learned advocate for the parties, perused the materials-on-record.

There is no dispute that the Court has the power under Order XXXIX Rule 8 of the Code to issue *ex-parte* writ of commission to hold local inspection of the suit property under Order XXXIX Rule 7 thereof but exercise of such power without assigning any reason is not warranted.

The part of the order dated June 07, 2024 whereby the Advocate Commissioner was appointed *ex-parte* is bereft of any reason, as such, is not sustainable and is accordingly set aside.

The learned Trial Judge shall re-consider the application under Order XXXIX Rule 7 of the Code afresh as expeditiously as possible in accordance with law and in doing so, shall not grant any unnecessary adjournments to either of the parties.

To facilitate such re-consideration, the defendants shall file their written objection to the said application within a week from date.

In view of the aforesaid order, challenge to the order dated July 08, 2024 has become infructuous.

C.O. 2544 of 2024 and C.O. 2546 of 2024 are thus disposed of with the above terms without any order as to costs.

Parties to act on the server copy of this order duly downloaded from the official website of this Court.

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

(Biswajit Basu, J.)