

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 2379 of 2022

Bimal Chandra Sarkar & Anr.

VS.

Smt Dipali Dutta Roy (Paul).

For the petitioners

:Mr. Siva Prosad Ghosh, Adv.

Ms. Srijani Mukherjee, Adv.

For the Opposite Party no. 1

:Mr. Gautam Das, Adv.

Heard On

:25.96.2024, 19.07.2024,
26.09.2024, 04.11.2024

Judgement On

:05.12.2024

Bibhas Ranjan De, J. :

1. The instant civil order has been preferred assailing the order dated 18.04.2022 passed in connection with E.J no. 131 of 2004 wherein Ld. Civil Judge, Junior Division, Bidhannagar has been pleased to refuse the prayer for local inspection by a Ld. Advocate

under Order 39 Rule 7 of the Code of Civil Procedure (for short CPC).

Brief Facts:-

2. Plaintiff/opposite party filed a suit for eviction on the ground of reasonable requirement, against the defendant/petitioner herein. Plaintiff/opposite party pleaded available accommodation to the plaintiff and his family members and also pleaded that there was no other alternative suitable accommodation. In course of that proceeding one local inspection was held at the instance of the plaintiff/opposite party, which ended in submission of final report. Subsequently, further construction was made in each floor of the subject premises by the plaintiff/opposite party. Thereafter, defendant/petitioner herein filed one application under Order 6 Rule 17 of the CPC with a prayer for incorporation of the fact of 'subsequent construction' and also an application under Order 39 Rule 7 of the CPC with a prayer for further local inspection with regard to 'subsequent construction'. Ld. Trial Judge *al beit* allowed the amendment application but refused to allow further inspection.

3. Being aggrieved by and dissatisfied with the order of refusal of the prayer of local inspection the instant civil order has been filed.

Point for Consideration:-

4. This Court is to find out whether Court can invoke the provision of Order 39 Rule 7 of the CPC for ascertaining suitable alternative accommodation available to the plaintiff/landlord in a suit for eviction on the ground of reasonable requirement.

Arguments advanced:-

5. Learned Counsel, Mr. Siva Prosad Ghosh appearing on behalf of the petitioners has strenuously contended that Ld. Judge erred in passing order of rejection of the application under Order 39 Rule 7 of the CPC only on the ground of earlier inspection held at the instance of the opposite party /plaintiff. It is further contended that Ld. Judge ignored the issues to be decided in a suit for eviction on the ground of reasonable requirement. Mr. Ghosh has further argued that subsequent construction was allowed to be incorporated in the written statement by way of amendment but the prayer for local

inspection in this regard, was refused without any valid reason.

6. In opposition to that, learned Counsel Mr. Gautam Das appearing on behalf of the opposite party has focused on the ground of business purpose. It is submitted that the suit room is situated in the ground floor facing road which is required for the purpose of initiating business by one of the members of the plaintiff's family.

7. Mr. Das has made an effort to make this Court understand that the suit was filed for eviction on the ground of requirement for the purpose of business and not for residential purpose.

Analysis:-

8. Before delving into the issue involved in this civil order it would be convenient to discuss the essential requisites for an eviction suit on the ground of reasonable requirement. To prove reasonable requirement in a suit for eviction plaintiff must establish the following:-

- Plaintiff must specifically plead and prove the reasonable requirement for eviction under the West Bengal Premises Tenancy Act 1997.
- The plaintiff must demonstrate a genuine and specific present need for the premises.
- The subject premises must be suitable for the plaintiff's intended use in terms of family members.
- Plaintiff must prove that he does not have any other reasonable suitable accommodation.

9. From the revised plaint filed on 15th October, 2020 it appears that the plaintiff/opposite party filed the Ejectment suit being no. 131 of 2004 with a prayer for eviction of the petitioner/defendant solely on the ground of reasonable requirement i.e. for his own use and occupation and also for the benefit of the members of the family. In paragraph 9 of the revised plaint, it is categorically highlighted that the sole ground for eviction is reasonable requirement of the family members of the plaintiff who has no other suitable alternative accommodation. In the revised plaint, plaintiff pleaded his

possession of one room in the ground floor and one room in the first floor.

- 10.** It is not disputed that at the instance of the plaintiff, the possession of the plaintiff in the subject premises was inspected by an Advocate Commissioner in terms of Order 39 Rule 7 of the CPC and accordingly report was submitted.
- 11.** It is also not disputed that after inspection of the subject property at the instance of plaintiff further construction of rooms were made and for that reason, presumably, petitioner/defendant filed an application for local inspection under Order 39 Rule 7 of the CPC, in support of alternative available accommodation to the plaintiff.
- 12.** From the application under Order 39 Rule 7 of the CPC along with written objection thereto, it appears though proposed amendment was denied by the opposite party/ plaintiff in paragraph 4 of the written objection but subsequently construction of new room was not denied.
- 13.** Contents of the written objection to the application under Order 39 Rule 7 of the CPC, in my opinion, is nothing but a

clear departure from the nature of the suit for eviction solely on the ground of reasonable requirement.

14. Therefore, considering the nature of the suit, subsequent construction is very much required to be inspected by an Advocate Commissioner to ascertain whether there is any alternative suitable accommodation available to the opposite party/ plaintiff.

15. It is not out of place to mention that requirement on the ground of 'commercial purpose' has not been pleaded anywhere in the revised plaint. Such plea of 'commercial purpose' has been taken for the first time in the written objection to the application under Order 39 Rule 7 of the CPC and that cannot be an issue of the suit.

16. Coming to the order impugned in this civil order, I find that Ld. Civil Judge, Junior Division, Bidhannagar disposed of two applications namely amendment of written statement under Order 6 Rule 17 of the CPC and petition for local inspection under Order 39 Rule 7 of the CPC. Ld. Judge allowed the proposed amendment incorporating the fact of subsequent construction by the opposite party/ plaintiff, in

the written statement. But, for the reason best known to him, Ld. Judge refused the prayer for local inspection under Order 39 Rule 7 of the CPC that too by recording a two lines order without assigning any reason, which was as follows:-

“ ...Perused the petition and other materials on record it appears to this court that there is no need to further inspection in the suit property. Once inspection has already been conducted...”

- 17.** Ld. Judge ignored the basic principle for consideration of an application under Order 39 Rule 7 of the CPC. As I have already discussed that the eviction suit was filed solely on the ground of reasonable requirement. Therefore, availability of the suitable alternative accommodation has to be ascertained for just decision of a suit for eviction on the sole ground of reasonable requirement. On this score, the impugned order, in my opinion, is not sustainable in law and liable to be set aside.
- 18.** The order rejecting the application under Order 39 Rule 7 of the CPC impugned in this civil order stands set aside. The application under Order 39 Rule 7 of the CPC stands allowed.
- 19.** Ld. Trial Judge is requested to appoint one Ld. Advocate Commissioner to inspect the locale after serving due notice to

the parties to the suit and to submit the final report before the Court within 6 (six) weeks from the date of receipt of the writ. Petitioner/ defendant is directed to deposit the cost of commission to the satisfaction of Ld. Trial Judge within stipulated time fixed by the Court.

- 20.** As a sequel, Civil revision application being no. C.O. 2379 of 2022 stands allowed.
- 21.** Interim Order, if there be any, stands vacated.
- 22.** Connected applications, if there be, also stand disposed of accordingly.
- 23.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 24.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]