

04.03.2024
Ct. No. 19
Sl. No.18
Cp

C.O. No. 2887 of 2022

Bikash Karar & Ors.
vs.
Dhiren Kumar Chatterjee

Mr. Sanjib Seth

... for the petitioners.

Mr. Amitava Pain
Mr. S. Datta

....for the opposite party.

1. The order dated August 8, 2022, passed by the learned Civil Judge (Junior Division), 3rd Court, Howrah in Title Suit No. 730 of 2018, is the subject matter of challenge in this revisional application.
2. By the order impugned, the learned court rejected an application for repair of the suit premises as per the Schedule. The Schedule is quoted below:-

“SCHEDULE
(for Repairing)

- a) Replacement of C.I. Shed.
 - b) Repairing of major crack in Northern and Southern walls.
 - c) Plastering and white washing of the inside wall.
 - d) Repairing of floor.
 - e) Replacement of main entrance door as well as collapsible gate and its frame.”
3. Mr. Seth, learned advocate appearing for the petitioners, submits that the learned court erred in law in holding that as the status of the defendant no. 1 either as a tenant or as a sub-tenant was to be decided in the proceeding, an order for repair could not be

allowed. Mr. Seth submits that the fact that the petitioners were in occupation of the premises was not disputed. The petitioners have a right to repair the said property as it would be extremely dangerous for them to use the property and run their business. The walls were in a dilapidated condition. The C.I. shed and the tin shed were damaged. The water percolated through the roof on to the electric meter box, which might result in serious accidents. He points out to the learned commissioner's report in support of his contentions.

4. Mr. Pain, learned advocate appearing on behalf of the plaintiff/opposite party, submits that the learned commissioner had categorically indicated in the report against each of the points for repair, inter alia, stating that the C.I. shed and the tin shed on the roof were reasonably old. The collapsible gate was slightly damaged at the lower level. The walls had a few cracks. According to Mr. Pain, there were no observations with regard to the flooring.
5. Having heard the learned advocates for the respective parties, this court agrees with the submissions of Mr. Seth that the question of status of the defendant was not required to be looked while deciding the application for repair. The status shall be decided at the final hearing of the suit.
6. However, with regard to the repair work as prayed for, I find from the learned commissioner's report that the

learned commissioner had categorically stated that the C.I. shed and the tin shed were in old condition. There were two cracks in the upper side of the window nos. 11 and 12. The floors were brick built but without plaster.

7. It does not appear from the learned commissioner's report that there is either any finding with regard to serious damage to the suit property which would require immediate repair or there was any recommendation by the learned commissioner that the occupants would suffer irreparable loss and injury if the repair was not allowed.
8. There is no evidence to support the contentions of the petitioners. These findings are matters of fact which were before the learned court and the learned court did not exercise inherent power by allowing any repair, during the pendency of the suit.
9. As it is submitted by Mr. Seth that the property has sustained further injury, this court is of the view that the subsequent events cannot be ascertained in this proceeding. This proceeding is limited to the learned commissioner's report and the inspections which were held sometime in 2021.
10. The question as to whether the property has been further damaged subsequently, is not decided in this proceeding.

Accordingly, the revisional application is disposed of.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)