

25.01.2024
Item No.29
gd/ssd

CO/3333/2023
CLINT EDWARD JOSEPH.
VS
NOOR HASAN & ANR.

Md. Kashif
..for the petitioner.

The Order No.39 dated 28th April, 2023 passed by the learned Judge, fourth Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No.385 of 2016 is under challenge at the instance of the defendant in this application under Article 227 of the Constitution of India.

Learned Advocate appearing for the petitioner submits that the ceiling of the both rooms of the suit premises is badly damaged and the floor of the verandah of the first floor of the suit building is required to be repaired.

The learned trial Judge rejected such application upon observing that no supporting evidence has been filed by the defendant as regards the alleged damage of the suit premises to ascertain the extent of damage.

Before allowing an application for repairing, the Court is to be satisfied as to the extent of damage

and as to whether the same is required to be repaired.

In the absence of any materials before the court below to enable the Court to ascertain the extent of damage, the learned Judge, in the considered view of this Court, was right in rejecting the application for repairing.

For the reasons as aforesaid, this Court is not inclined to interfere with the order impugned.

CO 3333 of 2023, accordingly, stands dismissed.

However, dismissal of this application shall not preclude the defendant/petitioner herein from taking appropriate steps in this regard.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities.

(HIRANMAY BHATTACHARYYA, J.)