

Ct. 27.06
No. 237 2024
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akb

C.O. 3861 of 2018
M/s. PKS Commercial Pvt. Ltd. Co.
-Versus-
Nilkanta Pahari

Mr. Debdut Mukherjee
Mr. Abhijit Sarkar ...For the Petitioner

Mr. Asit Baran Raut
Mr. Suhin Subhra Raut
Ms. Ishita Raut ...For the Opposite Party

The present application has been preferred for setting aside the impugned order dated 1st August, 2018 passed by the learned Judge, 3rd Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 206 of 2014.

The opposite party herein was a tenant under the plaintiff/petitioner herein in respect of one shop room on the ground floor at 88A, B.B. Ganguly Street, Kolkata – 700 012 at a monthly rental of Rs. 150/-, payable according to English Calendar month. After serving a notice of ejectment, the petitioner plaintiff filed aforesaid ejectment suit, being Ejectment Suit No. 206 of 2014 against the defendant/opposite party, interalia on the ground of building/rebuilding.

On or about July, 2016 the plaintiff filed an application for appointment of an Advocate Commissioner to inspect the tenanted portion as well as plaintiff's accommodation at the said premises. By an order dated 3rd January, 2017 the Court below allowed such application

filed by the petitioner for appointment of Advocate Commissioner and the Commissioner submitted a report after completion of commission work. Subsequently in March 2018, when the suit was posted for adducing evidence, the opposite party herein/defendant filed another application for appointment of local inspection commissioner to inspect the accommodation available to the petitioner/plaintiff at its registered office at 7, Camac Street, Azimgunj House, 4th Floor, Kolkata – 700 017. By the order dated 11th May 2018 the Court below was pleased to allow the said application filed by the opposite party herein/defendant.

Thereafter petitioner herein made an Application for modification recalling the said order to the extent of not physically measuring the rooms in the said flat which measured about 1357 sq.ft. Defendant/opposite party did not file written objection against such prayer. However by the impugned order dated 1st August 2018, court below rejected plaintiff's aforesaid prayer.

Being aggrieved by that order, petitioner submits that the petitioner runs several businesses from the said flat, which is used as office for such businesses where various persons visit the said office of petitioner and physical measurement and other commission work would hamper

normal office work of the petitioner and would cause extreme inconvenience and loss to petitioner. Accordingly, the petitioner plaintiff prays that the impugned order dated 11th May, 2018 to the extent of taking physical measurement of the said flat and rooms may be recalled and thereby the order could be modified.

Learned Counsel appearing on behalf of the opposite party defendant raised objection contending that if the measurement of the said alternative accommodation of the plaintiff is taken, the plaintiff will have no cause to prejudice, rather it would help the Court to come to definite finding pertaining to issue involved and for which learned Court below was justified in allowing the said Commission Work in toto as per schedule of commission work and as such order impugned does not call for any interference.

I have considered the submissions made on behalf of the parties. Upon hearing the parties it appears that the plaintiff/petitioner herein has no objection regarding commission work in respect of other three points namely point Nos, 1, 3 and 4 of the schedule of commission work in terms of the commission petition. He has only objection in respect of taking physical measurement of the flat and rooms therein as per point no.2. During course of argument learned Counsel appearing on behalf of the petitioner/

plaintiff submitted copy of his purchase Deed in respect of aforesaid accommodation of plaintiff which goes to show that the plaintiff has purchased the office at 4th floor of the said building, which is measuring about 1357 sp.ft. of super buildup area together with furniture fittings.

Since aforesaid deed clearly reveals the measurement of the said flat/ accommodation of the plaintiff/petitioner, I find that physical measurement of the said property is not required to be made by the Local Inspection Commissioner. However regarding other point mentioned in point no.2 of local inspection commission, Commissioner will submit a report indicating number of rooms which are there in the said flat but the learned Commissioner is not required to take physical measurement of the flat or the physical measurement of rooms thereunder in terms of the point No. 2 of the schedule of Commission Work.

I have been informed that the writ of commission work has already been issued to the Commissioner. Learned Commissioner is directed to conclude commission work and to submit its report as above within a period of six weeks from the date of communication of this order and the Court below is directed to expedite the final hearing of the suit.

The application, being C.O. 3861 of 2018 is

accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Ajoy Kumar Mukherjee, J.)