

AD2
20.05.2024
Court. No. 19

C.O. 4358 of 2023

Feroz Khan
Vs.
Abdul Rashid Khan

Mr. Vinay Kumar Purohit

...for the Petitioner.

Mr. Anirban Kar

Mr. Munshi Ashiq Elahi

Md. Sahidullah Mridha

...for the opposite party

The revisional application arises out of an order dated November 20, 2023 passed by the Learned Chief Judge, Small Causes Court at Calcutta, in Ejectment Suit No. 220 of 2022. By the order impugned, the Learned Court allowed the application for local inspection, in part.

The Nos. 1 and 6, were allowed by the Court.

Learned advocate for the petitioner submits that the specific ground taken in the suit was that the tenant had caused deterioration of the property by acts of nuisance and negligence. This was one of the grounds for eviction under Section 6(h) of the West Bengal Premises Tenancy Act 1997.

It is further stated that the accommodation of the tenant in another three-storied building, close by, was also required to be inspected in support of the contention that despite having accommodation in the

same area, the tenant was intentionally occupying the premises with mala fide motive. It is also submitted that the extent of the occupation of the tenanted premises by the defendant in premises No. 39 Mirza Ghalib Street, was required to be brought on record.

Mr. Kar, learned advocate appearing on behalf of the tenant opposes the prayers. It is submitted that Point No. 2 need not be allowed as both the parties agree to the extent of tenancy. The schedule and the plaint case clearly indicate the area occupied by the tenant. There are no allegations that the tenant had extended his occupation beyond the tenanted portion or had changed the user of the premises. It is also submitted that storage of garbage is not one of the grounds for eviction and the complaint before the police authorities also do not indicate any such allegation.

The written statement has been placed before this court to show that the three-storied building which was situated at premises No. 2, Cockburn Lane was being used as a guest house and, neither the tenant nor his co-owners were personally using the property.

Having heard learned advocates for the respective parties, this Court finds that points 1 and 6 have already been allowed by the learned Court. The assessment of the local features which have been

allowed in point 6 will also include whether there is any garbage or dirty water accumulated in front of the suit premises and in the parking area of the plaintiff. Thus, point number 2 and 3 of the schedule of local inspection is covered in point number 6. In my view, local features in this eviction suit must be limited to the plaint case. Point number 6 will be restricted to an inspection as to whether there was any storage of garbage and accumulation of dirt and dirty water causing blockage in front of the suit premises and whether a pipeline had been installed by the tenant which led to seepage of water into the parking area of the plaintiff.

With regard to the inspection of Cockburn Lane, this Court directs that such inspection will be limited to an assessment as to the mode of user of the building and whether the entire three-storied building was being used as a guest house or not or whether the tenant had kept a portion thereof, for his own use and occupation.

Under such circumstances, the order impugned is modified to the above extent. The learned Court, shall issue the writ to the learned Advocate Commissioner within two weeks from reopening of the court after the vacation.

The writ will be issued in terms of the discussion herein above. It is made clear that inspection of the

accommodation of the defendant in premises number 39 Mirza Ghalib Street is not necessary. The inspection will be held upon notice to the parties and in their presence. The report will be filed as per the direction of the learned court. Cost of such inspection shall be borne by the petitioner.

The revisional application is accordingly disposed of.

If any inspection has been held in the meantime, it shall not have any effect in the proceeding.

There shall be no order as to costs.

Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)