

28.03.2024.
Item no. 25.
Court No.19
ap

C.O. No. 4387 of 2023

**Sanatan Naskar
Versus
Panchugopal Ghosh & Ors.**

Mr. Pinak Ranjan Mitra.

...For the petitioner.

Mr. Animesh Das.

...For the opposite parties.

The revisional application arises out of an order dated October 3, 2023 passed in Title Suit No. 207 of 2013 by the learned Civil Judge (Junior Division), 4th Court, Howrah.

By the impugned order, the learned Court rejected an application under Section 153 of the Code of Civil Procedure, 1908. The petitioner filed the said application, in connection with the application under Order 39 Rule 7 of the Code of Civil Procedure. The petitioner claims to be a tenant in respect of a shop-room. The suit is for eviction.

By the application under Section 153 of the Code of Civil Procedure, 1908, the petitioner wanted to amend the application for local inspection by incorporating averments with regard to the actual measurement of the shop-room, which was the tenanted property.

The learned Court rejected the said application on the ground that whether the suit property

measured 250 sq. ft. or 100 sq. ft. would be a matter of trial. The description of the suit property with regard to the measurement was contrary to the plaint case and as such, such measurement could not be introduced in the application for local inspection.

The plaintiff's contention was that by introduction of the measurement of shop-room as 250 sq. ft. instead of 100 sq. ft., the tenant was extending the tenanted portion, and was attempting to encroach the landlord's portion. The learned Court rightly refused to allow such amendment. The learned Court fixed the application for local inspection, for hearing.

Mr. Mitra, learned Advocate appearing for the petitioner submits that all that the tenant wanted, was ascertainment by way of local inspection as to whether the suit property required repair or not.

Mr. Animesh Das, learned Advocate appearing on behalf of the plaintiffs/opposite parties submits that the learned Court did not commit any irregularity or illegality by refusing to allow the tenant to incorporate the measurement of the shop-room. He further contends that if such amendment was allowed, the same would be contrary to the schedule of the property in the plaint and the Court could not go behind the schedule.

I find substance in the contentions of Mr. Das. I do not find any illegality or irregularity in the order impugned. The learned Court has fixed the application

under Order 39, Rule 7 of the Code of Civil Procedure, 1908 for hearing. In the said application, a prayer has been made for appointment of an Advocate Commissioner to hold a local inspection as per the points in the schedule and to submit a report.

In my opinion, the measurement of the shop-room is not relevant either for the purpose of local inspection or for the repairing work. The commissioner will only indicate whether the said shop-room requires immediate repair or not. If the answer is in the affirmative, the Commissioner has to indicate the extent and nature of repair. Measurement of the shop-room does not fall within the purview of the Commission Work. The suit will proceed on the basis of the plaint case and the onus will be on the defendant to rebut the same, after the plaintiffs have discharged their onus.

Accordingly, the learned Court is directed to dispose of the application under Order 39, Rule 7 of the Code of Civil Procedure, 1908 within a period of one month from the next date fixed.

With the aforesaid directions, the instant revisional application is disposed of.

There will be, however, no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Sarkar, J.)