

13.05.2024
Sl. No.8(DL)
srm

C.O. No. 4500 of 2023
Anup De Chowdhury
Versus
Prasanta Kumar Mullick

Mr. Probal Kumar Mukherjee,
Mr. Rajat Dutta,
Ms. Sanjukta Ray

...for the Petitioner.

Mr. Debdipto Banerjee,
Mr. Soumen Banerjee

...for the Opposite Party.

1. The revisional application has been filed challenging an order dated September 8, 2023 passed by the learned Civil Judge (Junior Division), Additional Court at Sealdah, South 24-Parganas.
2. By the order impugned, the learned court rejected an application for local inspection, in a suit for eviction of a tenant. The defendant/tenant prayed for inspection of the roof of Premise No.49/A, Sambhu Babu Lane, P.S. Entally, Kolkata – 700 014.
3. Prior to the application which was rejected, another application was filed by the tenant for inspection of the

four storeyed premises situated at 49/A, Sambhu Babu Lane. The points were as follows:

- “(a) To go (sic. go) the locale at premises No.49/A, Sambhu Babu Lane, P.S. Entally, Kolkata – 700 014 and to ascertain how many number of floors of the said premises and to ascertain total number of rooms of the said premises in the ground, 2nd and 3rd floor of the said premises and its measurement and mode of user by mentioning the articles found therein.
- (b) To draw a hand sketch of the entire premises of 49/A, Sambhu Babu Lane, P.S.- Entally, Kolkata – 700 014.
- (c) Any local feature as pointed out by both the parties of the suit.”

4. The learned trial court had rejected such prayer.
5. The matter came up before the High Court in C.O. No.2293 of 2022. By an order dated November 28, 2022, the learned coordinate Bench, although recorded submissions of the opposite party/plaintiff that the other co-owners may not allow local inspection of all the floors which were in their possession, directed the inspection to be held within a particular period. His Lordship did not clarify the extent of the area to be inspected in the said order. On account of delay, cost was imposed upon the defendant/tenant.

6. The ordering portion is recorded below:

“The revisional application is thus disposed of, upon setting the impugned order subject to the condition that petitioner will pay a cost of Rs.30,000/- (Thirty thousand) to the opposite party within seven (07)

days from the date of communication of this order to the court below.

Subject to the deposition of the cost, the court below may appoint learned inspection commissioner within three (03) days from the date of deposition of cost, upon directing the expenses of the commission, as would be deemed fit and proper by the court below, and the commission work must be concluded within ten (10) days thereafter.

After submission of the commissioner's report, the cross-examination of PW-1 may be resumed, providing opposite party a scope to adduce evidence, upon recalling PW1, if necessary so that the opposite party may not be left unredressed for holding of local inspection belatedly.

Petitioner is directed to make communication of this order to the learned court below."

7. Once the local inspection was allowed, it has to be presumed that the inspection would be on the points in the application which have been quoted above, in the absence of any specific direction or formulation of the points by the coordinate Bench.
8. Such inspection was held and the report was filed. The report indicates that on the ground floor a door situated at the eastern side was found under lock and key. It was not possible to take the measurement. The plaintiff did not unlock the door. With regard to the second floor, it was found that on the northern side a room was under the occupation of one Sri Pradip Kumar Mullick, who refused to allow the commissioner to take measurements. On the eastern side, another door was locked and

measurements could not be taken. On the third floor, there were two closed doors in the northern and eastern side. The plaintiff was asked to unlock the said doors, but the plaintiff informed the commissioner that he was not in occupation of the third floor and the third floor was in occupation of the plaintiff's brother. Thus, the commissioner reported that he was not in a position to ascertain the number of rooms in the ground, second and third floor of the premises, as he could not get any entry to the said floors. The other local features have been enumerated in the said report.

9. In my view, it is for the plaintiff to prove that the alternative accommodation available to the plaintiff in the joint property was not adequate and the suit property was reasonably required for the plaintiff and his family. Once the plaintiff discharges such burden, it is on the defendant to prove that the accommodation available in the joint property was more than adequate.
10. The contention of the plaintiff that the other floors, the ground, second and third were occupied by the other co-sharers, would have to be rebutted by the defendant in the course of the evidence. The onus is on the defendant to prove that the plaintiff had intentionally

resisted the commissioner from taking inspection and measurement of such rooms which were under his possession in the joint property.

11. Under such circumstances, I do not find any necessity to allow local inspection of the roof. The contents of the report are already on record and the parties are at liberty to take advantage thereof as per law. It would be for the trial court to decide the suit on the evidence on record.

12. The revisional application is, thus, disposed of.

13. There shall be no order as to costs.

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

(Shampa Sarkar, J.)