

Ct. No.
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03.07
2024

**IN THE CIRCUIT BENCH OF CALCUTTA
HIGH COURT AT JALPAIGURI
Civil Revisional Jurisdiction**

C.O. 27 of 2024
Sri Shyamal Sutradhar
-Versus-
Pabitra Kumar Adhikary

Mr. Madhusudan Dutta
Ms. Srishti Sarkar **...For the Petitioner**

Affidavit-of-service filed on behalf of the petitioner is taken on record. Despite service, opposite party is not represented.

Being aggrieved by and dis-satisfied with the order No. 46 dated 30th September, 2023 passed by the learned Civil Judge (Junior Division), Jalpaiguri, in Title Suit No. 75 of 2012 (renumbered as Title Suit No. 621 of 2014), present application has been preferred by the petitioner/defendant. By the impugned order, the learned Court below was pleased to allow the plaintiff's prayer for local inspection commission.

The petitioner's contention is that the opposite party filed a suit for declaration and injunction against the present petitioner praying, inter alia, that the Electric High Voltage Line/Connection provided in favour of the petitioner, by the West Bengal State Electricity Distribution Company Limited which had passed through over the land of the opposite party, is to be declared illegal,

with a further prayer that the petitioner shall be directed to remove the unauthorised poles, as no written consent was taken from the opposite party before installation of electric poll over the land of opposite party.

During pendency of the suit, opposite party filed a petition under Order XXVI, Rule 9 of the Code of Civil Procedure, praying, inter alia, for appointment of Commissioner to submit a report about topography of the suit property. Though the said petition was filed under the heading Order XXVI, Rule 9, but at the time of passing the order, the Court below observed that the legal provision has been misquoted in the petition unintentionally and he treated the same as an application under Order XXXIX, Rule 7 of the Code and accordingly he allowed the same in favour of the plaintiff.

Being aggrieved by that order, petitioner herein submits that from the points mentioned in the petition for commission, it is clear that the intention of filing the said application is only to fish out evidence because the Commissioner cannot report about possession in respect of the property and furthermore the points mentioned in the petition will no way help the Court to adjudicate the

real controversy between the parties. To support the contention of the petitioner, learned Counsel for the petitioner has relied upon an unreported decision of this Court passed on 12.12.2023 in the case of *Sanjay Dey Vs. WBSEDCL & Ors.*, (MAT 16 of 2023). Accordingly he has prayed for setting aside the order impugned.

I have considered the submissions made by the petitioner and I have perused the points for inspection commission. On perusal of the points for inspection, I find that point mentioned in 7(a) of the petition, which relates to submission of a report about the actual possession of the suit property, cannot be allowed as the object of local inspection commission can never be to fish out evidence in the garb of local inspection commission. However, in connection with the other points mentioned in the petition for local inspection commission that can very well be reported by a commissioner in order to bring a topography of the suit property before the Court which may help the Court to come to a conclusion about the present dispute between the parties. In such view of the matter, I find nothing perverse in allowing the said application for local inspection commission by the Court below except allowing the point mentioned in paragraph 7(a) of the

local inspection petition.

In such view of the matter, the present application, being C.O. 27 of 2024 is hereby disposed of with the observation that the Commissioner will conduct the commission work in terms of the order impugned except point No. 7(a) of the local inspection petition and will submit a report at the earliest.

It is also made clear that this order will not preclude either of the parties to prefer an application for local investigation commission under Order XXVI, Rule 9 in future, if situation demands for adjudication of the real controversy between the parties.

C.O. 27 of 2024 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on compliance of necessary formalities.

(Ajoy Kumar Mukherjee, J.)