

ASR 26.
Ct. no. 24.
27.08.2025

C.O. 656 of 2024

Khaleda Begum & Ors.
Vs.
Nandan Das & Ors.

Mr. Sanim Ahammed
Mr. Sandip Das
Mr. Arka Ranjan Bhattacharya

.....For the petitioner

Mr. Sounak Bhattacharya
Mr. Sounak Mondal
Mr. Abhrup Halder
Mr. Anurban Saha Ray
Mr. Bipasha Bhattachary

.....For the State

Instant Civil Revision application has been preferred against an order dated 16.12.2023 passed by the learned Civil Judge (Senior Division), Dimond Harbour in Title Suit No. T.S no. 57 of 2009.

The brief fact in this matter is that a suit for partition by metes and bound was preferred by the plaintiff before the learned court below, wherein predecessor of the present petitioners was defendant no. 13. After demise of defendant no. 13 the present petitioner were substituted in the said suit.

It is the contention of the petitioner/defendants are in possession of the suit property by constructing shop rooms over the same at the demarcated portion specifically stated in the written statement.

It is further contention of the petitioners that plaintiffs have only 4 decimal share in the suit property.

During the continuation of the said suit one order of status quo was passed by this court on 14th March, 2009 and it was made absolute on 26th May, 2014.

During the continuation of the said suit the shop rooms which were tenanted shop room of defendant nos. 13 Ka to 13 Gha become dilapidated. So they filed an application for repair, a Commissioner was appointed to locate the said shop rooms. The Commissioner has submitted a report showing the status, nature and character of the shop rooms.

Petitioners being defendant nos. 13 Ka to 13 Gha also made a supplementary application praying before the court for repairing as per the Commissioner's report.

Learned court below on 16th December, 2023 after hearing the parties has turned down the prayer for repair on the ground that if the prayer of the defendant is allowed the order of status quo was passed by this court, will be violated and there is apprehension of breach of peace by both parties.

Learned counsel for the petitioner challenged the order in this civil revisional application.

Learned counsel for the petitioner submits that the commissioner's report made it clear regarding the

status and nature and character of the shop rooms. They are dilapidated and if no repairing done the entire shop room would be damaged.

It is the further contention of the petitioner that the petitioner maintaining livelihood by receiving rent from the tenant who possess the shop rooms. Thus the order passed by the learned Trial court is required to be set aside.

Learned counsel appearing on behalf of the opposite party nos. 1 to 3 raised strong objection and submits that the instant application under Article 227 of the Constitution of India is not at all maintainable. All the parties to the suit are not made party in the instant proceeding, thus this court cannot pass any order in absence of any of the parties. He further submits that in the impugned order learned Trial court has rejected the prayer for repairing made by the defendant nos. 13 Ka and 13 Gha.

He submits that if the prayer be allowed there must be alteration, modification of the temporary injunction order which was passed by the learned Trial court on 4.3.2009 as well as made absolute on 26.5.2014.

He submits that against the order of modification appeal is maintainable. Thus this court holding jurisdiction of Article 227 of Constitution of India cannot entertain the instant prayer.

He further submits that the present petitioners do not possess the shop rooms and they have not in possession, thus they are not aggrieved party to claim for repair.

He referred the observation of Hon'ble Division Bench in **Smt. Satu Bala Dasi & Ors. Vs. Chatura Saha & Ors.** (2014) 2 ICC 920 Hon'ble Division Bench and submit the order of repair can pass only in the case of exigency, where the petitioners had no place to stay. The Hon'ble Division Bench on holding the situation that if the repairing is not made the petitioner therein had no place to stay passes, allowed the order of repair. In the present case the situation is totally different thus the ratio laid down in **Smt. Satu Bala Dasi & Ors. Vs. Chatura Saha & Ors.** is not applicable in this case.

Heard the learned counsel and perused the impugned order. Admittedly the objection raised by the learned counsel for the opposite party is justified the petitioner must make party to the proceeding in respect of other party to the suit. At this juncture the petitioner is at liberty to serve the application upon the other parties to the suit within a week.

It appears that the learned trial court has turned down the prayer of the defendant nos. 13 Ka and 13 Gha petitioners only on the ground that if the order of repairing be allowed that would modify or alter the order of temporary injunction.

I fail to understand the meaning of the order passed by the learned Trial court. If it is expedient to the learned Trial court that the prayer for repairing is necessary to be made then he is the every opportunity and jurisdiction to alter or modify the order of status quo under Order 39 Rule 4 of CPC which was granted by this by this court on the earlier occasion.

The consideration of the order passed by the learned trial court should be only on the prayer for repair. If it appears to the learned trial court that repair is required to be made then he should have altered and modified the order of injunction. There is no bar to the learned trial court to alter and modify the order of status quo passed by this court on the earlier occasion. On that score the learned trial court may pass necessary order to maintain the suit property.

In considering other aspect it appears that the defendant nos. 13 Ka and 13 Gha may have not possessing personally the suit property but possession through tenant also the possession of the defendant nos. 13 Ka and 13 Gha. It further appears that the report of the Commissioner has justifiable to demonstrate the fact that the suit property are in dilapidated condition. If any suit & property appears to be dilapidated, the court should take cognizance of the fact. It has been argued that by the learned counsel for the opposite party that the suit properties were

damaged due to the Cyclone Amphan hit the place in the year 2020. However, it is not clear how the Cyclone Amphan has damaged the rented premises but the inspection report of the Commissioner has clearly demonstrated that the suit property needs repair very promptly. It further appears that the petitioners (defendant nos. 13 Ka and 13 Gha) have only filed an application to made repair in terms of the Commissioner's report they have not placed any scheme of repair. Thus they need be directed to submit a scheme of repair before the learned trial court.

Under the above observation, it appears to me that the instant order passed by the learned trial court requires to interfere with. There are sufficient material to justify that the rented premises being B 1 to B 25 by the Commissioner requires immediately repair.

Thus the order passed by the learned trial court appears to me not justified and same is hereby set aside.

The prayer of petitioners (13 Ka and 13 Gha) for repair of the said rented property is allowed. Subject to the fact that the petitioners (defendant nos. 13 Ka to 13 Gha) must placed a detailed scheme of repair showing the requirement of repair for each and every shop rooms, the cost accompanying to be required, the time required for repair and also a Commissioner

required to appoint to verify the work of repair who shall submit report after completion.

On the above score, the instant Civil Application is considered and allowed.

The order passed by the learned trial court dated 16.12.2023 is considered and rejected. This prayer for repair is allows. The petitioner is directed to file necessary application before the learned trial court regarding scheme of repair which should be verified by the learned trial court and if it appears to the learned trial court, he shall pass necessary further order regarding scheme of repair.

The learned trial court also liberty to pass necessary order to protect the suit property till the disposal of the said repair.

Till the learned trial court takes the decision regarding the scheme of repair, no repair should be allowed.

Under the above observation the instant Civil Application is disposed of.

[Subhendu Samanta, J]