

Court No. 6
(265719)

07.03.2025
(AD 24)
(S. Banerjee)

CO 812 of 2025

Bina Biswas & Anr.
Vs.
Purnima Das & Anr.

Mr. Jayanta Datta
Mr. Atanu Mondal

...for the petitioners

Mr. Sourav Mondal
Mr. Arijit Bhuiya
Mr. Abhirup Halder
Mr. Rony Mondal

...for the opposite parties

When this matter is called on, learned advocate for the opposite parties submits that he has instruction to appear in this matter though he has not lodged any Caveat.

A copy of the civil revision application has been served upon the learned advocate representing the opposite parties in court today.

By the order impugned being No. 59 dated January 8, 2025 passed by the learned Civil Judge (Jr. Division), 2nd Court at Alipore in Title Suit No. 20838 of 2011, the application under Section 151 of the Code of Civil Procedure praying for repairing the suit premises and an application under Order 39 Rule 7 of the Code praying for appointment of Commissioner to inspect the condition of the

premises and to submit a report, stood rejected. The ground for rejection of the aforesaid applications was that an earlier application for repairing, stood rejected and such order has already attained finality and, therefore, the application for repairing is barred by the principles of *res judicata*.

Learned advocate appearing for the petitioners submits that the suit premises is in a dilapidated condition and the repairing work is necessary to make the suit property a habitable one.

Learned advocate for the opposite parties vehemently opposes the prayer for repairing. He submits that there is no necessity for repairing of the suit premises and such application was filed only to delay the hearing of the suit. He also submits that since the earlier application for repairing was rejected, the subsequent application is barred by the principles of *res judicata*.

It is well settled that the principles of *res judicata* applies also between the subsequent stages of the same proceeding. However, if there is a change of circumstance and a subsequent application is filed under changed circumstances, the principles of *res judicata* may not apply in such a case.

It is not in dispute that when the earlier application for repairing was rejected, no prayer for local inspection was made.

It is elementary that in order to decide as to whether repairing of the suit premises is necessary, the exact condition of the suit property has to be brought before the learned Court. Without holding a local inspection it will not be possible for the Court to decide as to whether repairing of the suit premises is at all necessary.

Considering the fact that the petitioners have filed an application for holding local inspection to bring the real picture with regard to the condition of the suit premises before the learned trial Judge, this Court is of the considered view that there has been change of circumstance and the learned trial Judge was not right in rejecting the application under Order 39 Rule 7 of the CPC on the ground that the earlier application for repairing stood rejected.

After going through the points for local inspection as stated in the schedule of the application under Order 39 Rule 7, this Court finds that an Advocate Commissioner is to be appointed to hold commission work on the points as indicated in the schedule of the application.

For such reason this Court is inclined to interfere with the order impugned.

The impugned order stands set aside. The application under Order 39 Rule 7 of the CPC stands allowed. The application under Section 151 of the CPC, praying for repairing of the suit premises, stands restored to the file of the learned trial Judge.

Learned trial Judge is directed to appoint an Advocate Commissioner and a time limit should be fixed for undertaking the commission work. The learned trial Judge shall also fix the remuneration of the Advocate Commissioner.

After the commission work is concluded and the Advocate Commissioner files the report, the learned trial Judge shall consider the application for repairing afresh after hearing the learned advocates for the respective parties and after taking into consideration the report of the Advocate Commissioner.

It is, however, made clear that this Court has not gone into the merits of the issue as to whether the repairing work of the suit is necessary or not. Such issue shall be decided by the learned trial Judge only after the learned Advocate Commissioner, to be appointed by the learned trial Judge, submits the report after holding the commission.

With the above observations and directions, CO
812 of 2025 stands disposed of.

(Hiranmay Bhattacharyya, J.)