

Court No. 6
(265719)

28.03.2025
(AD 20)
(S. Banerjee)

CO 1098 of 2025

Sanjoy Dutta & Ors.
Vs.
Mominul Islam

Ms. Shohini Chakraborty

...for the petitioners

This application under Article 227 of the Constitution of India is at the instance of the defendant in a suit for eviction under the West Bengal Premises Tenancy Act, 1997 and is directed against an order being no. 13 dated February 11, 2025 passed by the learned Additional District Judge, Fourth Court at Burdwan in Title Appeal No. 37 of 2022.

By the order impugned the application under Order 39 rule 7 of the Code of Civil Procedure filed by the opposite party herein at the appellate stage, stood allowed.

Ms. Chakraborty, learned advocate for the petitioners vehemently submits it was the specific stand of the opposite party before the learned trial Judge that the opposite party will not pray for any local inspection. She further submits that the learned

Judge of the first appellate Court allowed the application for local inspection only on the ground that such an application is maintainable at the appellate stage without taking into consideration the stand of the opposite party in that regard before the learned trial Judge.

The opposite party herein filed a suit for eviction *inter alia* on the ground of reasonable requirement. In order to get a decree for eviction the landlord or any person for whose benefit the premises is held has to prove that he reasonably requires the premises for his own occupation and the landlord or such person is not in possession of any suitable accommodation within the same municipal corporation or municipality or in any other area within 10 kilometers from such premises where the act extends. In order to prove that the landlord reasonably requires the premises for his own occupation, local inspection of the premises is necessary. Though the opposite party herein took a stand before the learned trial Judge that he will not apply for local inspection but the fact remains that the opposite party, at the appellate stage, has filed an application for local inspection.

Section 107(1) of the Code of Civil Procedure deals with the powers of the appellate Court. It states that subject to conditions and limitations as may be

prescribed, an appellate Court shall have the power to determine a case finally; to remand a case; to frame issues and refer then for trial; and to take additional evidence or to require such evidence to be taken. Sub-section 2 of Section 107 states that subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly or may be the same duties as are conferred and imposed by this Code on courts of original jurisdiction in respect of suits instituted therein.

In view of the provisions laid down under Section 107 of the CPC, the first appellate Court has the power to determine the case finally and the power of the appellate Court is co-extensive with that of the trial Judge.

Order 39 Rule 7 of the Code states that the Court may on an application by any party to a suit and on such terms as it thinks fit, make an order of detention or preservation or inspection of any property which is the subject-matter of such suit as to which any question that may arise therein.

It is not in dispute that in a suit for eviction *inter alia* on the ground of reasonable requirement, the question as to whether the landlord reasonably requires the suit premises for his own occupation or for the occupation of his family members and also

whether the landlord is in possession of alternative suitable accommodation, are to be looked into.

It is well settled that in a suit for eviction on the ground of reasonable requirement, a local inspection is necessary to bring the picture before the Court in this regard.

The learned Judge of the first appellate Court arrived at a finding that local inspection is necessary for the complete adjudication of the appeal.

For such reason this Court is not inclined to interfere with the order of the learned first appellate Court.

CO 1098 of 2025 accordingly stands disposed of.

(Hiranmay Bhattacharyya, J.)