

M/L- 1407
21/07/2025
Ct. No.-6
Aritra

C.O. 1320 of 2024

**Sri Biswajit Karmakar
Vs.
Sri Suman Saha & Ors.**

Mr. Biswaranjan Bhakat
Mr. Satyaranjan Kundu
Mr. Subroto Mukherjee
Mr. P. Das

...for the petitioner

Mr. Subir Banerjee
Mr. Anupam Ghosh
Ms. Sudeshna Maji

....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order dated February 20, 2024 passed by the learned Civil Judge (Jr. Div.), 1st Court at Malda in OC No.5 of 2020.

By the order impugned, the Commissioner's report was accepted and the date was fixed for peremptory hearing.

Mr. Bhakat, learned advocate assisted by Mr. Kundu, Mr. Mukherjee and Mr. Das appears for the petitioner and submits that the learned trial judge even after accepting the Commissioner's report fixed the suit for peremptory hearing by keeping the application for repairing pending.

The learned advocate appearing for the opposite parties submits that the commission was held without

inspecting the wall and other portions of the suit property. He further submits that the roof of the suit property was also not properly inspected.

Heard the learned advocates for the respective parties and perused the materials placed.

The petitioner herein filed a suit for declaration of tenancy right and for permanent injunction. In such a suit the petitioner filed an application praying for repairing of the roof, electricity connection and for repairing of a shutter. In aid of the application for repairs the petitioner also took out an application under Order 39 Rule 7 of the Code of Civil Procedure. Such application was allowed and a Commissioner was appointed for holding local inspection. The Commissioner submitted a report. After going through the report of the Commissioner, this Court finds that the Commissioner opined that the roof is in a damaged condition and the same should be repaired and the tobs on the roof should be displaced. It further appears that at the time of commission the petitioner indicated to the Commissioner about the damaged electrical connection and the shutter, collapsible gate etc.

By the order impugned, the Commissioner's report was also accepted.

Record reveals that a co-ordinate Bench by an order dated May 10, 2022 in CO 1374 of 2020 directed that the petition for repairing filed by the petitioner be

heard out afresh taking help of the local inspection Commissioner's report and the learned trial judge will be free to decide the same after giving hearing to the parties afresh in accordance with the provisions of law.

It appears from the report of the Commissioner that the suit property requires immediate repairs.

Since the application for repairs has been filed by the petitioner and the same still pending, this Court is of the considered view that a direction should be passed upon the learned trial judge to dispose of the repairing application expeditiously considering the fact that the roof is in a damaged condition and the monsoon has already set in.

At this stage, Mr. Bhakat, learned advocate for the petitioner submits that the next date has been fixed only on September 25, 2025. He submits that the repairing application be directed to be heard out by the learned trial judge by preponing the next date of hearing.

In the light of the submission made by the learned advocate for the petitioner, CO 1320 of 2024 stands disposed of by giving liberty to the petitioner to file an application before the learned trial judge praying for preponing the date of hearing of the application for repairing. If such an application is filed within 7 days from the receipt of a server copy of this order, the learned trial judge is requested to fix a short date for hearing of the application for repairing considering the fact that the

monsoon has already set in and the roof is in a damaged condition.

The learned trial judge is requested to dispose of the application for repairs as expeditiously as possible without granting any unnecessary adjournments to either of the parties.

It is however, made clear that this Court has not gone into the merits of the application for repairing at this stage and it will be open to the parties to make submission in support of their respective claims before the learned trial judge.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Hiranmay Bhattacharyya, J.)