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IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 1379 of 2024

Shew Bachan Singh @ Chauhan
Versus
Kesto @ Kaniailal Das

Mr. Tarak Nath Halder
... For the petitioner.

Mr. Dev Kumar Chandra
Ms. Ananya Adhikary
.... For the opposite party.

1. Challenging the order dated 17th June, 2022, passed by the learned Civil Judge (Junior Division), Additional Court, Sealdah, South 24-Parganas, in T. S. No. 35 of 2007 rejecting the defendant's/petitioner's application for repair, the instant revisional application has been filed.
2. To understand the scope of the aforesaid revisional application it is necessary to note down the facts leading to the institution of the present revisional application.
3. The above suit proceeds on the premise that the plaintiff is the owner of the premises no. T/31/G, Biplabi Barin Ghosh Sarani, Kolkata – 700 067 and the defendant/petitioner is a 'bharatia' under the plaintiff in respect of one room made of brick walls on two sides and darma walls on the other two sides which is covered by tin roof. According to the plaintiff, the defendant is a habitual defaulter in

payment of rent. The plaintiff requires the suit property for its own use and occupation. The plaintiff had served a notice on the defendant to quit and vacate the suit property. Since the defendant did not vacate the suit property despite expiry of the notice period, the above suit was filed.

4. During the pendency of the aforesaid suit the defendant/ petitioner had filed an application under Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") for urgent repair of the suit property. In paragraph 2 of such application the petitioner had stated that no repairing work in the suit room/property was undertaken for a long period and the condition of the said room was lying in very poor and damaged condition and finally on 9th July, 2018 the tin shed roof of the suit property had collapsed and the same is required to be repaired in an urgent manner. In the circumstances, the petitioner sought for a direction from the learned Court to carry out urgent repairs of the suit property as per the schedule of repairs forming part of such application. To morefully understand the scope of schedule of repair the same is extracted hereinbelow:-

The schedule of Repairing Works.

(1) To re-install/re-fixing the tin roof by making

bamboo structure on the ceiling of the suit room at premises no. T/31/G, Biplabi Barin Ghosh Sarani, Kolkata – 700 067 and if necessary, by placing the Tarpolin sheet over the roof of the suit room.

(2) To make repairing of the damaged darma walls (on two sides) by fixing new darma wall in place of the existing broken/damaged darma walls of the suit room.

(3) To repair and/or plastering works of the damages portion of the brick built walls (on two sides) of the suit room and also to repair the damaged portion of the floor of the suit room by cement plastering.

(4) To repair and/or replace the damaged door and windows of the suit room.

5. The plaintiff/opposite party had filed a written objection on 6th March, 2019 and in such objection it was, inter alia, contended that the defendant had damaged the suit room in its entirety and at present there is no existence of the suit room. In the said written objection it was, inter alia, stated that no construction should be permitted to be carried out on the suit property beyond the sanctioned plan of Kolkata Municipal Corporation. In paragraph 9 of such objection, it was further stated that since the suit property is a thika tenanted property, the learned Court should not pass any order permitting construction without any express permission from the Thika Controller.

6. It appears that plaintiff had since taken out an application for holding local inspection where upon an advocate commissioner was appointed and a writ of commission was issued by an order dated 14th January, 2020 with a direction upon the commissioner to conduct a local inspection as per the points mentioned in the schedule of the petition for local inspection dated 5th April, 2019. Pursuant to the aforesaid, the commissioner had filed a final report and in such report he had been able to identify remnants of the structure of the suit property and also had prepared a sketch map. However, the learned Judge noting that at present there was no structure over the suit property and the same is vacant with trees standing thereon had refused the application filed by the defendant for repair.
7. Mr. Halder, learned advocate appearing in support of the aforesaid revisional application would submit that the petitioner had no fault in delaying the hearing of the proceeding. Immediately after the suit property had been damaged, the petitioner applied before the learned Court. If the learned Court had taken four years' time to dispose of such application and in the interregnum the kutcha structure on the suit property having

collapsed, the petitioner cannot be held responsible thereof. He would submit that in the facts noted hereinabove, this Court may be pleased to set aside the order passed by the learned Court on 17th June, 2022 and allow the petitioner's application for repair.

8. Mr. Chandra, learned advocate enters appearance on behalf of the plaintiff/opposite party. He would submit that admittedly, on this date of passing the order there was no construction. The aforesaid would find support from the report filed by the advocate commissioner. The learned Judge by noting the commissioner's report had rightly rejected the application for repair. No interference is called for.

9. Having heard the learned advocates appearing for the respective parties I find that the instant suit has been filed for recovery of possession of a suit property as identified in the plaint. The plaint case does not proceed on the premise that the vacant land had been let out on the plaintiff, on the contrary it proceeds on the premise that the plaintiff had let out a structure to the defendant. The structure has duly been identified under the head Schedule of property in the plaint. In the written statement filed by the defendant I find that the

defendant has claimed that structure has been constructed by the defendant. Having regard thereto without going into such an issue, there cannot be any dispute as regards the existence of the structure on the suit property at the time of the institution of the suit. It appears that in the year 2018, the defendant/petitioner had filed an application under Section 151 of the Code, inter alia, praying for repair and in paragraph 2 thereof, specifically stated that on 9th July, 2018 the suit property which was otherwise in damaged condition suffered further damage as the tin shed roof of the suit room had collapsed.

10. The above application had remained pending before the learned Court for nearly four years. The commissioner appointed at the instance of the plaintiff though after nearly two years from the date of making the application for repairs, was able to identify the extant of the suit property as would corroborate from the sketch map. He could also identified the existence of some structure though the exact structure could not be identified by him. Considering the above, I am of the view that the petitioner should not be made to suffer by reasons of the delayed disposal of his application for repair.

11. In view thereof, I set aside the aforesaid order

passed by the learned Civil Judge (Junior Division)
Additional Court, Sealdah, South 24-Parganas.

12. Let the repair works in terms of schedule of repair as provided for in the application filed by the petitioner for repair of the suit property be carried out by the petitioner under the supervision of a commissioner. For the said purpose, the petitioner is permitted to apply before the learned Court.
13. Let it be recorded that Mr. Halder, learned advocate representing the petitioner on instruction has submitted that the petitioner shall not claim any compensation for constructing the aforesaid structure nor claim any benefit on the basis thereof and in the event the suit succeeds no compensation shall be claimed for carrying out such repair and this order for repair shall be without prejudice to the rights and contentions of the parties in the suit and the petitioner shall not be entitled to claim any right or equity on the basis thereof.
14. With the above observations and directions the revisional application is disposed of.
15. There shall be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Raja Basu Chowdhury, J.)