

20.08.2025
Item 548 ML.
Court No.6.
AB

**C. O. 1711 of 2024
With
CAN 1 of 2025
(not in file)**

**Binoy Bhuson Dey
Vs
Panchu Gopal Sadhukhan**

Mr. Debjit Mukherjee,
Mr. Kaustav Bhattacharya,
Ms. Priyanka Janafor the Petitioner.

Mr. Prantick Ghosh,
Mr. Sourav Guha,
Mr. Prasad Bhattacharya...for the Opp. Party.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no.28 dated 15.01.2024 passed by the learned Civil Judge (Jr. Division), 2nd Court, Barasat in Title Suit No.259 of 2018.

By the order impugned, the application praying for repairing the suit premises stood rejected.

Mr. Mukherjee, learned advocate appearing for the petitioner, submits that the suit property is in a dilapidated condition and a Commission was also held. The Commissioner in his report has stated that the suit property requires urgent repairs.

Learned advocate appearing for the opposite party submits that the suit property is not in

repairable state. The same cannot be repaired and it is a case of reconstruction which cannot be permitted.

The petitioner herein filed a suit for declaration of tenancy right and for permanent injunction. The petitioner filed an application under Section 151 of the Code of Civil Procedure praying for replacement of the damaged seven numbers of tin from the shed of the tenanted factory premises and replacement of damaged bamboos from the structure on which the tin shed is lying. It further appears that a local inspection was held and the Commissioner submitted a report.

However, after going through the impugned order, this Court finds that the prayer for repairing was rejected only on the ground that the estimated cost of repairing was not mentioned in the application.

After going through the application for repairs, this Court finds that the petitioner sought for permission to repair at his own cost. In view thereof, there was no necessity of an estimate of the repairing cost to be mentioned in the said application. The learned Trial Judge did not consider as to whether or not the suit property requires urgent repairs.

The report of the Commissioner was also not taken into consideration while passing the impugned order. The prayer for repairing was rejected only on the ground that the estimated cost was not mentioned. This Court has already held that it was not necessary

to give an estimate of repairing as the plaintiff wants to make the repairing at his own cost.

For such reason, this Court is inclined to set aside the impugned order and to remit the matter to the learned Trial Judge for a fresh decision.

Accordingly, the order impugned stands set aside.

The application for repairs is restored to the file of the learned Trial Judge. The learned Trial Judge is requested to consider the said application afresh and dispose of the same in the light of the observations made hereinbefore after giving an opportunity of hearing to the respective parties and by passing a reasoned order.

The petitioner will be at liberty to pray for an early date of hearing of this application. If such an approach is made, the learned Trial Judge shall consider the same and pass orders accordingly.

C. O. No.1711 of 2024 stands disposed of along with the connected application.

Urgent Photostat Certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Hiranmay Bhattacharyya, J.)

