

CO/3230/2024

**HARIPADA NASKAR
VS.
BALARAM NASKAR AND ORS.**

Mr. Ujjwal Datta, Adv.
Mr. Indranuj Datta, Adv.

...For the Petitioner

Mr. Chittapriya Ghosh, Adv.
Mr. Goutam Acharya, Adv.
Ms. Priyanka Saha, Adv.
Ms. Sayani Pan, Adv.

...For the Opposite Party
Nos.1 & 5

1. Affidavit-of-service filed by the learned advocate appearing for the petitioner is taken on record.
2. This revisional application has been filed against an order of refusal to the review application against an order of refusal to repair the scheduled portion mentioned in the application filed under section 151 of the Code of Civil Procedure. According to the petitioner, schedule of repair of those areas are minor in nature and those are necessary considering ensuing Monsoon season.
3. The petitioner being the plaintiff filed an application to carry out the repairing work at the suit property where he is in possession with the proposed schedule of repairing work which are minor in nature.
4. The learned trial court did not consider the urgency and also on the wrong assumption, was pleased to

refuse such prayer with the observation that the plaintiff failed to file any single scrap of papers in support of his contention and also put findings that if the entire repair work is allowed to be done, the suit property would lose its original nature and character.

5. Against that order, a review application dated 11th May, 2022, under Order 47 Rule 1 of the Code of Civil Procedure was filed by the plaintiff-petitioner which was heard on 6th February, 2024, and rejected. Being aggrieved by the said order, the instant revisional application has been filed.
6. The learned advocate appearing on behalf of the opposite party Nos.1 and 5 vehemently opposed to the same and has submitted that the schedule mentioned in the review application was silent about any details regarding which such repair is to be taken out. Secondly, the claim of the plaintiff-petitioner that he is the absolute owner of the suit property is strongly denied. It is further contended that the other adjoining persons residing in the said building will be highly prejudiced if such repairing work is permitted and it would amount to change of the nature and character of the entire building.
7. At the outset, it is seen the present opposite parties are only 1 and 5 who are siblings of the proforma opposite party Nos.2 to 4. On perusal of the entire materials on record and the order impugned it appears that order under challenge before this court is the order of

rejection of the application to review the order dated 13th April, 2022, which was passed rejecting the prayer for repairing. Contention of the learned advocate appearing for the petitioner is that the repairs are very minor in nature and according to Rule 11 of the West Bengal Municipal (Building) Rules, 2007, permission is not required in respect of erection, re-erection, addition to or alteration of any building which includes repairing work in the nature as mentioned in Clauses (e), (g) and (i) of Sub-Rule 2 of said Rule.

8. The petitioner described the nature of work proposed to be undertaken were *(e) re-construction of an existing damaged roof without changing the character and dimension of such roof (g) plastering and patch work (i) replacing of fallen bricks, stones or repairing of damaged pillar or beams* and certainly are minor in nature and coming within the purview of the above provision.

9. The application filed under section 151 of the code of civil procedure the nature of repair appears to be plastering both sides of broken brick walls, replacing the clay tiles with corrugate tins or Tata metal sheets on the roof of the two rooms in possession of the plaintiff-petitioner. He also wanted to install iron grill at the existing window in one of the rooms due to safety and security against theft and other problems.

10. Therefore, *prima facie* the said repairs appears to be minor in nature and such repair works will not change the nature and character of the suit property but no advocate commissioner was ever appointed to inspect and submit any report regarding the extent of necessity to carry out such repair work . No written objection was filed by the opposite parties against such application for repair though the objection has been raised by the learned advocate appearing on behalf of the opposite party Nos.1 and 5 as regard the possession of the plaintiff-petitioner in the suit property, which in view of this court cannot be entertained at this stage without the written objection and other materials. Unfortunately, the Learned advocate for the opposite party is uncertain about the content of the written statement filed by them against the plaint case regarding possession of the plaintiff in respect of the suit property.

11. However this court is primarily concern about the propriety of the order of refusal to review. It is settled law that in order to maintain an application under order 47 rule 1 of cpc there must be an error apparent on the face of it .On careful perusal of the order impugned this court do not find any such observation which can be said to be error apparent on the face of it.

12. The learned court after considering the materials on record and after hearing the parties arrived at a finding against which the petitioner was free to move the

appropriate forum. Therefore, the application under Order 47 Rule 1 was not maintainable and therefore this revisional application has got no merit to be entertained.

13. Be that as it may, the nature of prayer sought for pertains to repairing of some parts of the suit property wherein the petitioner is allegedly residing and claiming the full ownership and admittedly, the petition for repair is silent about the details of area which are to be repaired. Accordingly, this court is of the view that the basic necessity of a person who is residing in a property must be considered subject to observance of the other required formalities in accordance with law. Therefore the petitioner is given liberty to file an application for repair afresh to be carried out in respect of the portion he is in possession. The petitioner is directed to file such petition, if any, within one week after ensuing Summer Vacation before the trial court, after serving the copy of the same on the present opposite parties/defendants in the suit. The opposite parties herein and the other defendants are also directed to file written objection to such application within a period of one week therefrom. The learned court is directed to hear out such application if any filed preferably within a period of fortnight from the date of filing of such written objection without granting any unnecessary adjournment considering the urgency in the matter. It

is also made clear that the learned court shall not be influenced by any of the observations if any made by this court in this matter touching the merit of the case and will hear out the matter in accordance with law after giving opportunity to both the parties and upon considering the materials available before the learned court.

14. The revisional application is thus disposed of accordingly.
15. There will be no order as to costs.
16. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]