

15.12.2025
Ct. No. 06
Sl. No.8
skg

C.O. No. 3667 of 2025

Satish Agarwal
Vs.
Prabir Kumar Seal

Mr. Shyamal Chakraborty,
Mr. Debajyoti Mondal,

.....for the petitioner

Mr. Subham Gupta,
Mr. Md. Agaan,
Mr. Rajsekhar B. Bakshi,

....for the opposite party

1. By the order impugned, the learned Judge 5th Bench, Presidency Small Causes Court, Calcutta in Ejectment Suit No. 24 of 2008 rejected the application under Order 39 Rule 7 of the Code of Civil Procedure.
2. The petitioner is the tenant in the suit for eviction, on the ground of reasonable requirement. The points for local inspection are quoted below.

“i.To make inspection of the third floor of premises No. 14/3, Chhattawali Gali and take the measurement of the room and/or accommodation available to the plaintiff at the said floor of the said premises and also to report as to the mode of user thereof;

ii) To take inspection of the room in the 2nd floor of premises No. 14/3, Chhattawali Gali which are in occupation of the plaintiff. Some of the rooms which are kept under lock and key being in occupation of the plaintiff is also to be taken into consideration and measurement thereof and also to report as to the mode

of user thereof be produced through inspection and report.

iii) To take inspection of the first floor of premises No. 14/3, Chhattawalli Gali and to take note of the measurement of the room in occupation of the plaintiff and also to take measurement thereof and to report as to the mode of user thereto along with measurement and other details of the accommodation available to the plaintiff at the said floor.

iv) To inspect and report as to the measurement of the room situate at the ground floor of premises No. 14/3, Chhattawalli Gali which the plaintiff has obtained possession from Gopal Agarwal on 11.04.2025 on the basis of execution of the decree relating to Ejectment Execution Case No. 187 of 2019 arising out of Ejectment Suit No. 24 of 2008 before the learned 5th bench, Presidency Small Causes Court, Calcutta.

v) To inspect and report as to the measurement of the room situate at the second floor of premises No.14/3, Chhattawalli Gali, Kolkata-700 012 which the plaintiff has got possession from Gopal Kumar Senei.

vi) To inspect and report as to the additional construction made by the plaintiff during the pendency of the suit at the ground floor and first floor of premises No.14/3, Chhattawalli Gali, Kolkata-700 012 being approximately 700 sq.ft. on the ground floor and 700 sq.ft. on the first floor of the said premises which has been let out to Md. Tousif and Darakhshan Tousif during pendency of the suit.

vii) To inspect and report and also to measure the room and/or accommodation approximately about 1000 sq.ft. in the ground floor of the premises No.14/3, Chhattawalli Gali which the plaintiff has let out during the pendency of the suit and after previous commission report was submitted to Royal India Transport.

ix) To report as to any other point or points that may be appeared to be relevant for the purpose

3. The learned court was of the view that an advocate commissioner was appointed on an earlier occasion and a report had been submitted. The accommodation of the plaintiff on the second floor was also filed by way of supplementary examination in chief of the PW1. The suit against the 2nd floor tenant was withdrawn as the same was defective. A fresh notice was issued upon the said tenant who had kept all the rooms under lock and key for a prolonged period. The plaintiff was taking steps to file a fresh suit. With regard to the actual measurement of the room which was obtained by the plaintiff by virtue of a decree passed in another suit, the court found that the measurement of 700 square feet was available from the judgment and decree. Under such circumstances, the court held that, local inspection of the accommodation which was obtained by the plaintiff by virtue of a decree of eviction against another tenant, was not necessary.
4. The allegation of construction of a stair case, was found to be irrelevant for adjudication of the dispute between the parties. Construction of a stair case neither increased nor decreased the available accommodation of the plaintiff, as per the opinion of

the Court. It was an admitted position that, the third floor of the suit property was in the occupation of the plaintiff. Thus, point nos. 1, 2, 4 and 5 were found to be unnecessary for the reasons cited by the learned court.

5. With regard to the inspection of the additional construction allegedly made by the plaintiff during the pendency of the suit, the Court was of the opinion that the Advocate Commissioner was not a scientific expert, and he would not be in a position to find out whether the construction was pre-existing or had been made at a later date. Thus, the advocate commissioner could not be appointed for inspection of the alleged newly constructed area. The court was of the view that the petitioner would have to prove the case of additional construction.
6. The advocate commissioner's report namely Exbt. 12, had clarified the possession of the plaintiff i.e. one room in the first floor, four rooms, one kitchen, covered connecting passage in the third floor and one thakur ghar in the fourth floor and beside the thakur ghar there was an open terrace.
7. Learned Advocate Commissioner had been cross examined at length on these aspects and the report was accepted. Under such circumstances, the learned court held that the inspection was not necessary.

8. However the tenant's case is that, additional construction was made after the commissioner's report had been filed in 2022 and such additional construction was also let out to two tenants. This is a subsequent event. The learned court also opined that this issue would have to be decided by a Scientific Expert and not by an Advocate Commissioner.
9. Under such circumstances, the order impugned is modified to the extent that the petitioner shall file an application for appointment of an Engineer Commissioner (Expert), who shall make an inspection of the alleged additional construction on the ground floor of the suit property and give his opinion in the form of a report as to the age of such construction i.e. when such construction was made and if any such construction is found, whether sanction had been granted for such additional construction. The area covering such construction and the mode of user of such additional construction, if any, shall also be stated in the report. The learned court shall dispose of the said application by passing necessary order of appointment of an Engineer Commissioner, from the panel/list of the Kolkata Municipal Corporation. The cost shall be borne by the petitioner.
10. With the above observation the revisional application is accordingly disposed of.
11. There shall be no order as to costs.

12. Parties are to act on the server copy of this order.

(Shampa Sarkar, J.)