

7th February,
2025
(AK)
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C.O 3543 of 2024

Sikha Dutta
Vs.
Dilip Sen and another

Mr. Rwitendra Banerjee
Mr. Aritra Roychowdhury
...for the petitioner.

Mr. Shuvanil Chakraborty
Mr. Kanak Kiran Bandopadhyay
...for the opposite party no.1.

1. Learned counsel for the defendant no.2/petitioner in a declaratory suit has preferred the present challenge against an order whereby an application under Order XXXIX Rule 7 of the Code of Civil Procedure filed by the plaintiff in aid of a repair application of the plaintiff has been allowed.
2. Learned counsel for the petitioner argues that a local inspection by an Advocate Commissioner would not suffice in view of the extremely dilapidated condition of the suit property.
3. As such, the petitioner is agreeable to pay the expenses for appointment of an expert, that is, an Engineer Commissioner for holding in investigation within the contemplation of Order XXVI Rule 9 of the Code of Civil Procedure.

4. It is also pointed out that in view of the nature of repair sought, the points of inspection would not suffice.
5. Learned counsel for the opposite party submits that the inspection work has already been completed.
6. However, it is conceded by the learned Advocate for the opposite party, on such submission being made by the petitioner, that an application has been filed by the Commissioner for recusing himself.
7. Be that as it may, I find from the schedule of the repair application, in aid of which the application for local inspection was allowed, that the repair encompasses not only white-washing, plastering, and painting but also flooring, replacement of bargas of the ceiling and alteration of broken doors and windows.
8. As such, the petitioner is justified in contending that the appointment of an Engineer Commissioner would more suit the purpose for which the local inspection was allowed.
9. Accordingly, C.O. 3543 of 2024 is partially allowed, thereby modifying the impugned order and directing the learned Trial Judge to appoint an Engineer Commissioner afresh within a fortnight from date at the cost of the present petitioner for the purpose of holding a local investigation to ascertain the veracity of the requirement of the

points sought in the repair application, being patch repairing, plastering, flooring, replacement of bargas of the ceiling, colour painting and white-washing, alteration of broken doors and windows as well as to ascertain the general condition of the suit structure as well as the structural stability of the same.

10. It is expected that the Commissioner shall, after being so appointed within a fortnight from the date of communication of this order to the court below, file his/her report as early thereafter as possible.

(Sabyasachi Bhattacharyya, J.)