

17.11.2025
Ct. No. 06
Sl. No.11
Cp

C.O. No. 3871 of 2025

Sri Prabir Roy Chowdhury
Vs.
Smt. Reena Majumdar & Ors.

Mr. Partha Pratim Roy
Mr. Dyutiman Banerjee
Mr. Ayanava Das

.....for the petitioner.

Mr. Malay Dhar
Mr. Biswajit Sarkar
Mr. Anupam Some
Mr. Shouvik Naskar

.....for the opposite parties.

This application has been filed challenging an order dated September 1, 2025, passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore, in Ejectment Suit No. 55 of 2013. By the order impugned, the learned court rejected an application under Order 26 Rule 9 of the Code of Civil Procedure. The petitioner prayed for appointment of an engineer commissioner. The learned court was of the view that the application was not maintainable and the prayers therein were not tenable in the facts of the case.

It appears to the court that a notice was received by the plaintiffs/opposite parties from KMC with regard to an unauthorized construction. The matter was before the High Court and by an order dated May 6, 2024, the High Court observed that some unauthorized construction had

been detected and steps should be taken by the executive engineer of KMC to deal with the unauthorized construction, in accordance with law. By the said order the petitioner as also the opposite parties were given opportunity to raise all points at the time of hearing, before the hearing officer.

It is pertinent to note that, the defence of the petitioner against the delivery of possession was struck off by an order dated June 5, 2018.

The present suit is a suit for eviction. The petitioner is the tenant who has already suffered an order under Section 7(3) of the West Bengal Premises Tenancy Act, 1997. It is submitted on behalf of the opposite parties that the hearing officer has passed necessary orders and a minor deviation has been regularized.

Be that as it may, Mr. Roy, learned advocate appearing on behalf of the petitioner, submits that the application was necessitated in view of the fact that under the garb of demolition and/or remodeling of the structure the plaintiffs were attempting to violate an earlier order passed in the suit by which the plaintiffs were directed not to disturb the ingress and egress of the petitioner. Accordingly, on the points as stated in the application, an inspection/investigation by an engineer commissioner will be necessary.

The schedule of the points are quoted below:

“A. To take note of the cracks which has appeared and visible on the wall of the schedule-“A” property. With addition and alteration of the total house.

B. To give opinion to the extent of damages which has occurred due to the remodeling the total house and on the roof of the 2nd floor made a heavy work without KMC permission appearing at different places of the house.

C. To take note whether any deviation as per sanction plan of KMC.

D. To take note sanction plan of the premises and KMC Mutation of the plaintiffs and their title. Which is more urgent for the finality of the case.

E. To inspect the premise located and situated at 2/29, K.P. Roy Lane, Kolkata – 700078 and 111, Jadavgarh Colony, Kolkata-700078 as per KMC record.

F. To take note of any other local features.”

In a suit for eviction in which the tenant has suffered an order under Section 7(3) of the West Bengal Premises Tenancy Act, 1997, the tenant does not have any further right to set up his own defence contrary to the averments in the plaint. The tenant only has the right to demolish the plaint case by cross-examining the plaintiff, and nothing more.

Whether there is any deviation from the sanction plan in the construction made by the land lord, whether the plaintiffs have any title, whether the property was mutated in the names of the plaintiffs or whether the works going on at the second floor, would compromise the structural stability of the building are hardly of any

consequence and are not relevant for determination of the lis in the eviction suit.

Under such circumstances, the application was rightly rejected.

The opposite parties pray for expeditious disposal of the suit. This prayer shall be made before the learned trial judge.

The revisional application is accordingly disposed of. There shall be no order as to costs.

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

(Shampa Sarkar, J.)