

Ct. 16.05
No. 29 2025
196
akb

C.O. 3797 of 2024
Sri Debashis Roy
Vs.
Md. Iqbal & Ors.

Mr. Sourav Guhathakurta
Mr. Surajit Dutta
Mr. Avratanu Sarkar **...For the Petitioner**

Affidavit of service filed by the petitioner is taken on record. In spite of service, opposite parties are not represented.

Being aggrieved by the order dated 7th September, 2024 passed by the learned Civil Judge, (Junior Division), 2nd Court, Asansol, Paschim Bardhaman in Title Suit no. 482 of 2021, present application has been preferred by the petitioner/plaintiff no. 1. By the impugned order, learned court below allowed defendants' prayer under Order 39 Rule 7 of the Code of Civil Procedure.

Being aggrieved by the said order, learned counsel for the petitioner submits that the court below has passed the impugned order in a cryptic manner and failed to consider the nature of the petition for local inspection commission filed by the opposite party nos. 1 and 2 herein. The petitioner herein as plaintiff have obtained ad-interim order of injunction against opposite party herein but inspite of injunction order opposite party tried to dispossess the petitioner and for which petitioner filed a petition for police help and thereafter defendants/opposite parties filed instant

petition for local inspection to collect evidence but the Court below allowed the said petition wrongly assuming that petitioner does not have objection against local inspection commission and as such, the petitioner has prayed for setting aside the order impugned.

I have considered the submissions made on behalf of the petitioner. On perusal of the order sheets, it appears that the suit was fixed on 6.8.2024, when the court had directed the plaintiff/petitioner to show cause as to why suit shall not be dismissed for default and next date was fixed on 7th September, 2024 for showing cause by the petitioner / plaintiff. However, on 7th September, 2024 by the impugned order, learned court below without making any observations about his previous direction for filing show cause by the plaintiff, had taken up the application filed by the opposite parties under Order XXXIX Rule 7 of the Code for local inspection commission. Though the court below had recorded in the order that the advocate for the plaintiff raised no objection but it is submitted on behalf of the plaintiff/petitioner that such recording is erroneous and order was passed by the court below on erroneous assumption taking the same on that day as an unlisted matter.

It further appears that this is a suit for declaring plaintiff's right, title, interest and possession in respect of the

suit property and also for declaration that the deeds described in Schedule B are *void ab initio* and also for permanent injunction. Learned Trial court while dealt with the petition for local inspection commission under Order XXXIX rule 7 of the Code has not made any observation as to why the local inspection commission became necessary for adjudication of the real controversy between the parties. The order is cryptic one and the court below has allowed the local inspection commission, merely observing that in his opinion the appointment of local inspection commissioner is necessary for having real picture and for proper adjudication of the case. No doubt the Court has power to order inspection of any property under Rule 7 but from the order impugned I do not find any observation that for detention, preservation or inspection of suit property or grounds mentioned in Rule 7, such inspection is necessary. In my view, such cryptic order without showing any reason is not sustainable in the eye of law, as it is well settled that the reason is the soul of the order and the order without having reason is body without soul.

Having considered the aforesaid facts and circumstances of the case, the application being C.O. 3797 of 2024 is allowed. The impugned order dated 7th September, 2024 is hereby set aside.

The court below is directed to give an opportunity to the plaintiff to file written objection against the defendants' petition under Order XXXIX Rule 7 of the Code within a period of 30 days from the date of communication of this order and on filing such objection, the court below will dispose of the defendants' application for local inspection commission filed under Order XXXIX Rule 7 afresh preferably within a period of 60 days thereafter, without being influenced by any observations made herein.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)