

30.07.2025

Sl no. 94

Ct no. 25

P.M.

**C.O. 3879 OF 2022
CAN 1 OF 2024**

**Sm. Manju Tewari
- Vs -
Sri Gour Chandra Mallik & Anr.**

Mr. Rohit Singh

... for the petitioner

Mr. Sounak Bhattacharya,

Mr. Anirban Saha Ray,

Mr. Sounak Mondal

... for the opposite party

1. The present petition has been filed challenging the order dated 29th November, 2022 whereby the learned Trial Court has rejected the application under Order 39 Rule 7 CPC being filed by the petitioner/defendant.
2. In backdrop the opposite party/landlord had filed a petition for eviction on the ground of bonafide necessity. By way of present application the petitioner/defendant has stated that the opposite party /landlord has made construction on the first floor of the suit premises and such construction was extended up to 2nd floor and 3rd Floor. It was further stated that Allahabad Bank vacated the 1st floor in the year 2016 during the pendency of this suit. The 1st floor was let out to the new

tenant Inter alia Goel Estull Clothing Pvt. Ltd.
for commercial purpose.

3. It was further alleged that opposite party/petitioner had got one shop room on the ground floor and the said shop room was relet to one Laxmi Kant Shah. Thus the petitioner/defendant prayed for appointment of a Commissioner for the inspection. The application was opposed on the ground that there is no need for the commission and the petitioner/defendant can cross-examine the witnesses on such points.
4. Order 39 Rule 7 of CPC provides that the Court may on the application of any party may order for inspection of any premises which is subject matter of the suit. The present petition is for eviction on the ground of bonafide requirement. The availability of the premises with the landlord is a necessary fact which is to be brought on record. The Court considers that the report of the commissioner, so appointed, will help in better adjudication of the dispute as it would be difficult for the petitioner/tenant to bring on record the extent/status of the opposite party/landlord at

his disposal. Needless to say that such commissioner report is required to be proved in accordance with law.

5. The court considers that the impugned order is unsustainable in law. Hence the petition is allowed. Order dated 29th November, 2022 is set aside.
6. It has been informed that during the course that after the impugned order the opposite party/landlord had moved an application for amendment and some new facts have also come on the record.
7. Let the Court appoint a commissioner to call for a report on the entire pleadings, including amended, as available on the record.
8. The cost of the commissioner shall be borne by the petitioner/defendant.
9. Learned Trial Court is further directed to expedite the matter and conclude within six months in accordance with law.
10. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Dinesh Kumar Sharma, J.)