

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION

CO 4360 of 2024

Elkom Enterprises Private
Versus
Sougata Banerji & Anr.

Mr. Amar Nath Das
Ms. Pampa Ghosh
... For the Petitioner.

1. The present revisional application has been filed, inter alia, challenging the order dated 29th February, 2024, passed by the learned Civil Judge, (Senior Division), 10th Court, Alipore, South 24-Parganas, in Ejectment Suit No.68 of 2014, whereby the petitions filed by the defendant/petitioner under the provisions of Order XXXIX rule 7 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "Code") read with Section 151 thereof dated 16th December, 2023 had been rejected.
2. Mr. Das, learned advocate appearing in support of the aforesaid revisional application would submit that since in this case the commissioner's report filed by the advocate commissioner on 3rd December, 2018 was not complete, the defendant/petitioner was compelled to file the above petitions. By referring to the petition appearing at page 98 of the revisional application he would submit that the defendant/petitioner

had prayed for an appointment of an advocate commissioner for local inspection at the proforma defendant's present residential house at "Monami Corner" being the premises no.162/1B P.G.H. Shah Road, Kolkata, on the points mentioned in the schedule of such application. According to him, the learned Judge had acted irregularly in rejecting such application. In addition to the aforesaid application, by referring to the application at page 108 of the present revisional application he would submit that another application under the provisions of Order XXXIX rule 7 of the Code had been filed since the commissioner's report filed on 3rd December, 2018 was incomplete. He submits that the learned Judge failed to take note of the fact that commission proceedings sought for by the defendant/petitioner in the second application was in respect of the suit property, the learned Judge ought not to have rejected such application.

3. Having heard the learned advocate appearing for the petitioner and having considered the materials on record I find that the above Ejectment Suit No.68 of 2014 was filed sometime in the year 2014, inter alia, on the ground of reasonable requirement. In the said suit, on 27th June, 2018 the plaintiff had filed an application

under Order XXXIX rule 7 of the Code for holding local inspection. By an order dated 4th July, 2018, the learned Court had granted the defendant an opportunity to file a written objection. The above application was allowed on contest by order dated 16th August, 2018. After the commissioner was appointed, the commissioner had submitted a report on 3rd December, 2018. The order sheets would also demonstrate that all along the defendant/petitioner participated in the proceedings. It also appears that the Court had subsequently framed the issues on 7th December, 2018. Upto this stage no attempt was made to impeach the report filed by the Commissioner. On 16th January, 2019 the suit was posted for ex parte hearing as the defendant did not appear. On 18th January 2019 the defendant appeared praying for participating in the suit with an undertaking to file vacating application. Accordingly, the defendant was permitted to participate and PW-1 was called to the dock. Record would reveal that the defendant/petitioner has also filed its affidavit-in-chief. Subsequently, the defendant/petitioner had filed an application under Order XXXIX rule 7 of the Code on 6th December, 2023 praying for an order for appointment of an advocate commissioner for

local inspection in respect of a property which does not form subject matter of the suit. Still later, independent of the aforesaid, on 29th February, 2024 a further application was filed under the provisions of Order XXXIX rule 7 of the Code for appointment of an advocate commissioner for local inspection in respect of the suit property.

4. Admittedly, in the suit an advocate commissioner had been appointed by order dated 16th August, 2018 and the said advocate commissioner had filed his report more than five years back. If the defendant/petitioner was aggrieved by the report of the advocate commissioner it was for the defendant/petitioner to challenge such report by filing exception/written objection. Admittedly, such course of action had not been adopted. I find from the order passed by the learned Judge on 29th February, 2024 that the learned Judge by noting that the application filed under the provision of Order XXXIX rule 7 of the Code on 6th December, 2023 does not pertain to the suit property has rejected such application. The other application filed by the defendant/petitioner on 29th February, 2024 was also rejected by holding that the petitioner had the scope to agitate the same in the application which was already rejected. I may note that the subsequent

application filed by the defendant/petitioner under Order XXXIX rule 7 of the Code after ten years from the date of institution of the suit, and after the plaintiffs' witness action is complete is an abuse of process of the Court to say the least. Already the learned Court had allowed the application for local inspection and the defendant/petitioner having not taken recourse to the report filed by the advocate commissioner could not have called upon the learned Court to appoint another commissioner for a further commission in respect of the suit property which has been completed long back. I also find that the learned Judge considering the conduct of the defendant for dragging the case has imposed costs which do not appear to be unreasonable.

5. Having regard thereto, there is no scope to interfere. The revisional application stands dismissed.
6. There shall be no order as to costs.

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

(Raja Basu Chowdhury, J.)