

Item No.5
09.02.2026
Court. No. 6
GB

C.O. 275 of 2025

Sri Abhishek Karnani
Vs.

West Bengal State Warehousing Corporation

*Mr. Piyush Chaturvedi, Sr. Adv.,
Mr. Sayan Sinha,
Mr. Ashim Kumar Chattopadhyay*

...for the Petitioner.

*Mr. Mainak Krishna Ghosh,
Mr. Sukanta Ghosh,
Mr. Soumya Mukherjee*

...for the Opposite Party.

1. This is an application challenging an order dated December 17, 2024, passed by the learned Civil Judge (Senior Division), 8th Court at Alipore in Ejectment Suit No.13513 of 2013.
2. By the order impugned, the learned court rejected an application for appointment of an engineer commissioner under Order 26 Rule 9 of the Code of Civil Procedure. The petitioner prayed for appointment of an engineer commissioner to measure the suit property, ascertain the damage caused to the suit property and to highlight the local features, if any. The learned court held that the points for local investigation would be covered in the proceeding for mesne profit, which is a separate proceeding under Order 20 Rule 12 of the Code of Civil Procedure, after the decree of recovery of khas possession is allowed by the court. After closure of evidence and at the stage of arguments, appointment

of an engineer commissioner was not required and should not be allowed. The measurement of the suit property, the ascertainment of the nature of damage caused to the suit property would be relevant only after a decree for recovery of khas possession of the suit property was passed in favour of the plaintiff and against the defendant. The plaintiff would have every opportunity to take recourse to Order 20 Rule 12 of the Code of Civil Procedure for making such enquiry that would be relevant towards the claim of mesne profit from the defendant.

3. Mr. Chaturvedi, learned senior advocate appearing on behalf of the petitioner submits that in the evidence, the defendant raised a dispute with regard to the measurement of the suit property. He submits that unless an engineer commissioner is appointed to measure the area of the godown which was let out to the opposite party, the plaintiff will not be able to prove his case. When there are disputes with regard to measurement of the suit property, Order 26 Rule 9 of the Code of Civil Procedure is always resorted to, in order to elucidate any doubt or dispute with regard to the measurement of such property. Similarly, the opposite party has let out parts of the suit property to outsiders, thereby, reducing the measurement of the warehouse to 5922 sq. ft. instead of 6466 sq. ft. The petitioner had no other

option but to pray for local investigation at a belated stage.

4. According to the plaintiff, the suit property comprised of the entire godown no.5 measuring 6466 sq. ft. at premises no.4, Netaji Subhas Chandra Bose Road, Police Station – Charu Market. The boundaries have been mentioned, that is, common passage in the North, common passage in the South, an attached three storied building consisting of several rooms, partly in the possession of the plaintiff and partly in the possession of the defendant in the East and godown no.4 in the West. Thus, godown no.5 and its description of boundaries are adequate for identification of the suit property.
5. It is for the plaintiff to prove his case for eviction. The suit is for eviction and recovery of possession of godown no.5 which measures a floor area of 6466 sq. ft. according to the plaintiff. In the written statement there is no specific denial either with regard to the area or with regard to the measurement and description of the godown. Karnani Settlement No.5 was the owner and the defendant came in possession in 1969 by virtue of an agreement. It appears that those documents are already marked exhibit. The plaintiff will prove his case on the basis of the evidence.

6. Similarly, the defendant will have to prove on the basis of evidence that the godown No. 5 which was initially let out measured around 5922 sq. ft. Mere statement in the evidence will not be adequate proof. Such statement needs to be corroborated. The learned court held that the issue of damage can be decided in the mesne profit proceeding only if the suit is decreed. Local feature of the suit property is not relevant for adjudication of the eviction suit. The plaintiff can always take advantage of the fact that the measurement of the suit property as delineated in the plaint, was never denied in the written statement.
7. Accordingly, the revisional application is disposed of without any interference of the order impugned.
8. Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)