

19.01.2026  
Item No.22  
Ct. No. 30  
Aloke

**CO 1499 of 2023**

**Subir Kumar Talukdar  
Vs.  
Anandamoyee Talukdar**

Mr. Chayan Gupta  
Mr. Pourush Bandopadhyay  
Mr. Pranay Mukherjee  
Mr. Uday Sharma  
... for the petitioner

Mr. Gautam Chakraborty  
Mr. Kartik Kr. Ray  
Mr. Ayan Basu  
Mr. Swagatam Deb  
Mr. Gourav Chakraborty  
... for the opposite party

1. The revisional application has been preferred challenging an order dated 14.02.2023 passed by the 2<sup>nd</sup> Civil Judge (Junior Division) at Barrackpore in Ejectment Suit No. 30 of 2010.
2. Vide the impugned order the learned trial Court held as follows :

*“On careful perusal of the petition filed by the plaintiff under Order 39 Rule 7 read with Section 151 of CPC and the final report filed by the Ld. Advocate Commissioner, it appears to this Court that in respect of point no. B of the said petition filed by the plaintiff upon which the Ld. Advocate Commissioner commissioned wherein she exceeded her jurisdiction and entered the property of third person who is not a party in the suit. Moreover, the properties where she entered is not also a suit property.*

*Now apparently from the report and from the petition filed by the plaintiff it appears to me that Ld. Advocate Commissioner has commissioned her work beyond her jurisdiction.”*

3. Vide the impugned order the trial Court was pleased to reject the Commissioner’s report.

4. On hearing the learned counsels for the parties and on perusal of the application under Order 39 Rule 7 CPC and the Commissioner’s report and the impugned order, it appears that point no. B in the application under Order 39 Rule 7 is as follows :

*“b) The alternative accommodation consisting of large show rooms in and around the locality which includes ‘Swati Traders’ at 172, R.N. Avenue, Sodepur, Kolkata-700110 available to the defendant and its measurement and the nature and mode of user of the same.”*

5. It appears that the suit property described in the schedule to the plaint is as follows :

*“ALL THAT the said premises comprising of one big room measuring about 850 square feet more or less on the ground floor of premises situated at 172, Rabindra Nath Avenue, Sodepur, known as ‘Ashirya’ Ward No. 16, under Panihati Municipality, District-North 24 Parganas, Kolkata-700110, P.S. Kharda.”*

6. It is admitted by the learned counsel for the petitioner herein that the premises number in the application under Order 39 Rule 7 is wrong.

7. It is further submitted that the premises other than, the suit premises is to be inspected considering that this is a suit for eviction filed by the plaintiff to show that the defendant has an alternative accommodation. It is thus necessary for inspection of the alternative accommodation. In such circumstances, the Court can always permit such inspection because the same is necessary for proper adjudication in cases of such nature.

8. Considering that the petitioner has erroneously noted the premises number in point 'B' of the application under Order 39 Rule 7 CPC, the civil revision is disposed of with liberty granted to the petitioner herein to amend the premises number in point 'B' of the application under Order 39 Rule 7.

9. It is made clear that even though the premises is outside the suit premises, the same is required to be inspected to adjudicate whether the defendant/tenant has any alternative accommodation and, in such circumstances, the prayer is not beyond "jurisdiction" as stated by the trial Court.

10. Accordingly, the trial Court shall allow the said rectification/amendment as permitted by this Court within seven days from the date of filing of such application by the petitioner and shall permit the inspection to be concluded within 30 days thereafter.

11. It made clear that objection in the present case is not necessary considering that the

amendment as permitted is just a clerical error which is being corrected and also in view of the fact that the opposite party herein had on earlier occasion filed his written objection against the application under Order 39 Rule 7 and the same was considered by the Court. There being no significant amendment, further objection against the same is not necessary

12. The impugned order dated 14.02.2023 passed by the 2<sup>nd</sup> Civil Judge (Junior Division) at Barrackpore in Ejectment Suit No. 30 of 2010 is thus set aside and the matter is remanded to the trial Court to adjudicate as per the direction in this order.

13. Civil revision stands disposed of.

14. Connected application, if any, stands disposed of.

15. Interim order, if any, stands vacated.

16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Shampa Dutt (Paul), J.)**