

25.02.2026
Court No. 06
Item No. 11
Sandip

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O. 4237 of 2025

Master Caterers Pvt. Ltd.
-Versus-

**Sri Krishna Arjun Trading &
Investment Co. Pvt. Ltd.**

Mr. Jaydip Kar, Sr. Adv.,
Mr. Mahendra Singh Yadav,
Mr. Chandan Mukhopadhyay,
Ms. Saswati Chatterjee,
Mrs. Satabdi Naskar (Kundu)
.....for the petitioner
Mr. Tanmoy Mukherjee,
Mr. Vinay Purohit,
Mr. Deepak Jain
.....for the opposite party.

1) The revisional application arises out of an order dated September 18, 2025 passed by the learned Judge, 4th Bench, Presidency Small Causes Court at Calcutta in Ejectment Suit No. 233 of 2017.

2) By the order impugned, the learned Court allowed the second application filed by the plaintiff under Order 26 Rule 9 of the Code of Civil Procedure, in Ejectment Suit No. 233 of 2017. The Court was of the view that as the suit was for eviction on the ground of addition, alteration and unauthorized construction the commission should be held. The objections of the defendant were considered and it was found that the defendant had taken a plea that

the addition and alteration were a part of the maintenance, repair and renovation of the suit property, which had been undertaken upon permission from the landlord.

3) The Court was of the view that the Engineer Commission could inspect the suit premises and give an opinion as to whether the structural stability of the suit premises had been compromised or damaged.

4) The report of the commissioner would elucidate whether a case had been made out by the plaintiff, for eviction on the ground of (m), (o) and (p). According to the Court the report would be a piece of evidence which had to be corroborated by further evidence. Moreover, the adversary had the right to cross-examine the commissioner. As such, no prejudice would be caused to the petitioner if the engineer commissioner was appointed.

5) Mr. Kar, learned senior advocate for the petitioner submits that the points for local investigation are identical to those made in an earlier application which stood rejected. An alteration in the language used, will not convert the points once rejected, to valid and cogent reasons for local investigation.

6) Mr. Kar further submits that an earlier application for local inspection was also withdrawn by the plaintiff. Thus, according to Mr. Kar, the learned Court could not have allowed a third attempt on the part of the plaintiff to fish out evidence.

7) Mr. Tanmoy Mukherjee, learned advocate for the plaintiff submits that in order to prove his ground for eviction, a local investigation would be necessary. The plaintiff is not an

expert, and cannot prove the structural instability that was caused to the premises on account of rampant construction by the petitioner. He referred to various averments in the plaint to establish the fact that the nature of construction made by the defendant affected the structural stability of the premises. The permission to renovate was subject to the petitioner ensuring that the property did not suffer any damage and structural changes.

8) Mr. Mukherjee points out to the written statement and submits that the renovation, addition or alteration were admitted, but the only defence taken was that the constructions did not jeopardize the structural stability of the premises and the addition and alteration were permitted by the landlord.

9) I have considered the rival contentions of the parties. I have compared the points for local inspection/investigation in the first application under Order 26 Rule 9 of the Code of Civil Procedure and those in the second application which was allowed. I find that the points are similar, except that the plaintiff had deleted the questions as to whether any unauthorized constructions had taken place. The points as to whether the windows had been constructed on the northern outer wall and western outer wall of the said flat; whether the size of the windows on the northern outer wall had been enlarged; whether the mezzanine floor had been made; whether lofts had been constructed inside the said flat at different portions; whether the air conditioning machines had been installed by breaking open the walls; whether demolition had been made in the load bearing walls,

thereby causing damage to the structural stability of the building etc, are similar to the points for local investigation in the first application.

10) First and foremost, letters have been exchanged between the parties, which show that renovation, addition and alteration were permitted. The plaintiff however mentioned that, no structural instability must take place. Thus, directing the advocate commissioner to cause an investigation on the specific points with regard to the windows, breaking down of load bearing walls, construction of the mezzanine floor etc., will not be proper. Whether those constructions were done with permission or not is a matter of evidence. The extent to which addition, alteration and changes were permitted and which were not, will have to be proved by the parties. However, as the suit is for eviction on the ground of additional and alteration which damaged the structural stability of the tenanted portion, the structural stability of the tenanted portion and the building has to be ascertained by an engineer.

11) In such circumstances, the order impugned is modified to the extent that the learned Court will appoint a structural engineer from the panel of the Kolkata Municipal Corporation, not below the rank of an Executive Engineer to cause an investigation of the tenanted portion (suit property) to ascertain whether the portion occupied by the petitioner is structurally stable or not or in any way affects the structural stability of the premises as also of the building. The learned Court shall

fix a date for such local investigation. The remuneration for the said work shall be paid by the plaintiff. The learned Court shall make all endeavour to expedite the suit. The remuneration shall be fixed by the learned Court.

12) Accordingly, the revisional application is disposed of.

13) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Sarkar, J.)