

N.22Sl
151/CL

CO 4504 of 2025

Sri Giridhari Barik
v.
Sri Tapan Mondal

05.03.26
Sl-13^(ML)
Ct-06
(S.R.)

Mr. Soumen Kumar Dutta
Mr. Subham Dutta ... for the petitioner.

Mr. Sankar Narayan Saha
... for the opposite party.

1. This revisional application is directed against an order dated December 2, 2025 passed by the learned Civil Judge (Junior Division), First Court, Contai, Purba Medinipur whereby the petitioner's application under Order 39 Rule 7 of the Code of Civil Procedure, 1908 (hereafter "the Code") has been rejected.
2. Learned advocate appearing for the petitioner invites the attention of this Court to an order dated August 26, 2025 passed by this Court in CO 3105 of 2025 whereby this Court had directed the learned Trial Court to decide the petitioner's application under Order 39 Rule 7 on merits. While so directing, this Court had recorded that the learned Trial Court had rejected the petitioner's application under Order 39 Rule 7 of the Code of Civil Procedure upon holding that the same was filed in order to delay the hearing of the J. MiSc. Case.
3. Learned advocate appearing for the petitioner

submits that on a comparative perusal of the order impugned herein and the order dated July 18, 2025 that had been impugned in CO 3105 of 2025, it will appear that the learned Trial Court has, in fact, dittoed the earlier order.

4. Learned advocate appearing for the opposite party submits that the petitioner had earlier also filed an application under Order 39 Rule 7 of the Code seeking local inspection. Such application was rejected by the learned Trial Court by an order dated November 22, 2023. Against such order the petitioner had approached this Court by filing CO 4182 of 2023, which was dismissed by holding that the application was aimed at collecting evidence. It is submitted that the petitioner is simply trying to endlessly drag the J. Misc Case in order to deprive the petitioner of the fruits of the decree.
5. Heard learned advocates appearing for the respective parties and considered the material on record.
6. It is evident from the material on record that despite a decree of eviction having been passed in favour of the opposite party as far as back in year 2015, the opposite party has not yet been able to reap the rewards of the suit in view of post decree litigations.
7. The petitioner claims to be a licensee in respect of the decreetal property. He asserts that he has been

in occupation since May 15, 2006 upon being granted permission by the erstwhile owner of the property from whom the Opposite Party has purchased the property. A decree for eviction had been passed in favour of the Opposite Party as far back as on January 31, 2015 which stood upheld upto the second appellate stage before this Court. The same has been put in execution by filing Title Execution Case No. 6 of 2015 which remains pending in view of serial post decree proceedings at the behest of two persons who were non parties to the suit. The petitioner is one of them.

8. One J. Misc Case 6 of 2016 filed under Order 21 Rules 97 to 101 of the Code got dismissed on June 27, 2022. Thereafter the petitioner filed J. Misc Case 25 of 2022 under Order 21 Rules 97 to 101 which is still continuing.
9. It is noticed that earlier too, in the same proceeding, the petitioner had filed an application under Order 39 Rule 7 of the Code of Civil Procedure, thereby alleging that the opposite party was trying to change the nature and character of the suit property. Such application was turned down by the learned Trial Court. Challenge thereto in revision before this Court also failed when C.O. 4182 of 2023 was dismissed.
10. The petitioner has thereafter again filed this

application for local inspection under Order 39 Rule 7, alleging that the opposite party has been trying to raise construction in order to block the petitioner's door. The application evinces that a notice was also issued by the concerned Municipality to both the petitioner as well as the opposite party and both have been heard. Except for the cosmetic change of allegation of raising construction, and the follow up points for inspection, there does not appear to be much difference in the two applications for inspection. In the earlier round, the said fact was evidently not brought to the notice of this Court when the order dated August 26, 2025 was passed.

11. The learned Trial Court has found that allowing the petition under Order 39 Rule 7 would not assist the Court in proper adjudication of the case and that the same has been filed for fishing out evidence. The learned Trial Court has further held that inspection of the decretal property as sought for would not assist the Court in proper adjudication of the case but would only delay the execution case.
12. This Court does not find any fatal flaw or defect in such finding. The petitioner's application under Order 39 Rule 7 is required to be looked at in the context of the antecedent facts.
13. An application under Order 39 Rule 7 can be

allowed only if the same is required for the purpose of arriving at a just decision and not to fish out evidence and to indirectly delay conclusion of execution proceedings.

14. In such view of the matter, this Court does not find any illegality and/or material irregularity in the order impugned.
15. CO 4504 of 2025 is dismissed without any order as to costs.
16. Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Om Narayan Rai, J.)