

(2010) 08 CAL CK 0096

Calcutta High Court

Case No: C.O. No. 2504 of 2010

Priya Ranjan Chowdhury

APPELLANT

Vs

Sipra Basak and Another

RESPONDENT

Date of Decision: Aug. 18, 2010**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 17, 151

Hon'ble Judges: Prasenjit Mandal, J**Bench:** Single Bench**Advocate:** Swapan Mullick, for the Appellant; Debasish Roy and Pran Gopal Das, for the Respondent**Final Decision:** Dismissed

Judgement

Prasenjit Mandal, J.

This application is at the instance of the defendant and is directed against the order No. 13 dated 19.06.2010 passed by the learned Additional District Judge, Eleventh Court, Alipore, District - South 24 Parganas in Title Appeal No. 297 of 2009 thereby rejecting the petition of the defendant/petitioner under Order 6 Rule 17 read with Section 151 of the Code of Civil Procedure.

2. The short fact is that the plaintiffs/opposite parties filed the Title Suit No. 305 of 2006 for eviction of the defendant/petitioner from the suit property as described in the schedule of the plaint on the ground of reasonable requirement and default and other reliefs. In that suit, one commissioner was appointed for holding local inspection for the measurement of the rooms under the occupation of the plaintiffs/opposite parties. After holding the work of the commissioner, the plaintiffs/opposite parties erected one bed room in the ground floor of the suit property and for that reason, the accommodation of the plaintiffs/opposite parties was inflated and so the defendant/petitioner wants to incorporate the said fact in the written statement by way of amendment. That application was rejected by the

impugned order. Being aggrieved, the defendant/petitioner has preferred this application.

3. After hearing the submission of the learned Advocate of both the sides and on perusal of the materials on record, I find that the specific contention of the defendant/petitioner is that after completion of the work of the learned commissioner, the plaintiffs/opposite parties had constructed one big size bed room in the ground floor of the suit property. Now the commissioner had held his work in presence of both the sides even he had taken the video photographs of the rooms under the occupation of the plaintiffs/opposite parties. Such report of the commissioner was prepared on 26.05.2008 but the petition for amendment of the plaint does not lay down any specific period or date when such construction was raised.

4. From the annexures filed in support of his application by the petitioner, I find that previously the defendant made a selfsame prayer which was rejected by the learned Trial Judge. Therefore, I find that the defendant has adopted a dilatory tactics in the matter of disposal of the suit. On the basis of the materials placed before the learned appellate court, the learned appellate court observed that there had been no further construction in the entire two-storied buildings and that in fact, the learned lawyer for the appellant had admitted this position at the time of his submission. So, the application for amendment of the written statement filed by the defendant was rightly rejected. Therefore, I am of the view that there is no perversity in the order impugned and so there is nothing to interfere with the impugned order.

5. Accordingly, this application is dismissed.

6. There will be no order as to costs.

7. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.