

29.06.2022
Item No.5
Ct. No.7
CHC
(disposed of)

C.O.629 of 2022

**Moloy Ghosh & anr.
Vs.
Soumya Ghosh & ors.**

Mr. Prasenjit Mukherjee,
Ms. Poulami Dutta,
Mr. Aslam Parvez
...for the petitioners

Mrs. Pampa Dey (Dhabal)
...for the opposite party no.1

The affidavit-of-service furnished by the petitioners
be taken on record.

Two orders are under challenge in this revisional
application, one against the order dated 1st June,
2021, allowing local investigation under Order 26 Rule
9 C.P.C., while another against order dated 24th
February, 2022, pertaining to refusal of a prayer for
suspension of commission work.

Mr. Mukherjee, learned advocate appearing for the
petitioners/defendants submits that order granting
local investigation has been allowed behind the back of
the petitioners, and that too, on the strength of a put
up petition being filed by the opposite party
no.1/plaintiff, but the court below has erroneously
recorded consent to have given by the petitioners, what
is not the real state of affairs.

Mr. Mukherjee contends that since it was allowed on the strength of put up petition, there left no occasion for the defendants to take part in the hearing of petition under Order 26 Rule 9 C.P.C. for giving express consent of the petitioners.

It is thus strongly contended that “consent”, as recorded in the operative portion of the impugned order dated 1st June, 2021, has been erroneously recorded, not pursuant to the express consent being given voluntarily by the petitioners.

It is further submitted by Mr. Mukherjee that since Local Investigation Commission was allowed behind the back, subsequently, a prayer was made for suspension of the commission work, which by the order dated 24th February, 2022 was refused.

Disputing with the proposed commission work, Mr. Mukherjee also contends that there is no need to go for local investigation commission, and it is purposefully made to collect some evidence, favourable to the purpose of the opposite party/plaintiff.

Per contra, Mrs. Dey (Dhabal), learned advocate appearing for the opposite party no.1/plaintiff submits that in the meantime, the commission work has already been concluded, and on 23rd March, 2022, the learned Investigation Commissioner has already submitted his report.

According to learned advocate for the opposite party no.1/plaintiff, petitioners have participated in the commission work pursuant to the notice being served upon them.

Thus, according to the opposite party no.1/plaintiff, the commission work having been concluded leading to the submission of learned Commissioner's report, there is hardly any scope for further adjudication in this case.

More so, the local investigation is needed to set issue raised in the pending litigation at rest permanently, and upon consideration of which, the court below rightly allowed the local investigation commission, learned advocate for the opposite party no.1/plaintiff argues.

Having considered the submission of both sides, it appears that commission work was allowed without providing an opportunity of hearing to the petitioners, and that too, on the strength of a put up petition being filed by the opposite party no.1/plaintiff.

Since it was allowed on the strength of a put up petition filed by the opposite party no.1/plaintiff, and when there is nothing revealed in the impugned order dated 24th February, 2022 about participation of the learned advocate for the petitioners in the hearing process of prayer for local investigation commission, the scope of exercising any consent is doubtful.

However, when the commission work has already been concluded, the statutory right to raise objection by the petitioners upon resorting to provisions available under Order 26 Rule 10(2) C.P.C. cannot be denied in any way whatsoever.

In the event of order dated 1st June, 2021 being declared to be inoperative, the same would unnecessarily cause further delay to the disposal of pending suit, apart from incurring further expenses necessary for the purpose of holding local investigation commission. When, an opportunity of hearing was not given, as it is submitted by the petitioners, the same may be duly redressed to by the court below allowing the petitioners to file an application under Order 26 Rule 10(2) C.P.C. to raise objection against the report submitted by the learned Investigation Commissioner and resolve the same in accordance with law, before accepting Commissioner's Report.

Such exercise, by the court below may be done within twelve (12) weeks from the date of communication of this order, irrespective of the fact whether the petitioners have taken part in the commission work or not.

Petitioners are, thus given liberty to file objection against the report submitted by the learned Investigation Commission availing of the provisions

under Order 26 Rule 10(2) C.P.C. within fortnight from the date of communication of this order.

The objection so raised, by the petitioners may be resolved giving an opportunity of hearing, if necessary, upon examining the learned Investigating Commissioner, who held the local investigation commission in accordance with the law.

While endeavouring objection hearing as per observation made in the body of this order, sufficient opportunity of hearing may also be extended to opposite party no.1/plaintiff.

The revisional application is thus disposed of with the observation made hereinabove.

Urgent certified photostat copy of this order, if applied for, be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Subhasis Dasgupta, J.)