

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.266 of 2022

Pradipta Kumar Mohanty ***Petitioner(s)***
Mr. D.P. Mohanty,
Advocate

-versus-

Kailash Chandra Mallik & Anr. ***Opposite Party(s)***
Mr. S.K. Sahu,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
08.04.2022**

Order No.

01. 1. On consent of the parties, this matter is taken up for final disposal at the fresh admission stage itself.
2. Dispute involves rejection of the attempt of the Petitioner on the report of the Commissioner by the trial court.
3. Mr. Mohanty, learned counsel for the Petitioner challenges the impugned order on the premises that even assuming that the report of the Commissioner is accepted, that may be at the maximum to be forming part of the record. It is also submitted by Mr. Mohanty, learned counsel for Petitioner that reports needs to be considered along with other materials and evidence available on record.

It is, in the above premises, Mr. Mohanty, learned counsel for the Petitioner seeks intervention of this Court in the impugned order.

4. Mr. Sahu, learned counsel for the Opposite Party in his opposition submitted that once there is exercise of Order 26 rule 9 of C.P.C. and even such exercise is undertaken in presence of the Petitioner; the report in such process has credibility and it has to be considered in the ultimate trial of the case. Mr. Sahu, learned counsel for the Opposite Party accordingly objected the entertainability of the C.M.P.

5. Considering the rival contentions of the parties, this Court finds, for the settled position of law the Commissioner's report obtained in exercise of power U/o.26 rule 9 of C.P.C will maximum be treated as a part of the record. It may not have any binding effect as ultimately disclosures in the report are to be considered alongwith other materials and evidence available on record and there cannot be independent consideration of such reports. This Court here takes note of a decision of this Court in the case of ***Sankar Kumar & Anr. Vs. Mohanlal Sharma*** as reported in **AIR 1998(Ori.)117** and finds, the decision has support to the case of the Petitioner, but to the extent indicated hereinabove.

In the circumstance, this Court though declines to interfere in the impugned order, but however keeps the scope for consideration of the report open to be made in the process of trial and effect of such report requires to be considered alongwith materials and evidence available on record.

6. The C.M.P. is disposed of with the above direction.

(Biswanath Rath)
Judge