

374(M/L).
14-07-2025
(Ct. no.06)
debajyoti
(Bench ID
265719)

IN THE HIGH COURT AT CALCUTTA
Civil Revisional Jurisdiction
APPELLATE SIDE
CO 122 of 2025

Pradip Kumar Gupta & Ors.
Vs.
Anjali Chowdhury & Ors.

Mr. Aditya Mondal,
Mr. Oishik Chatterjee,
Mr. Wasim Akthir Dafader

... For the Petitioners.

1. This revisional application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an order being no.100 dated November 06, 2024 passed by the learned Judge, 4th Bench, Presidency Small Causes Court, Calcutta, in Ejectment Suit No.385 of 2010. By the order impugned, the learned trial Judge directed that the petition dated 27th June, 2022 filed by the plaintiffs will be considered at the time of final argument of the suit.

2. Learned advocate appearing for the petitioners submits that the Commissioner was appointed under the provisions of Order XXVI Rule 9 of the Code of Civil Procedure. However, after submission of the report, the Commissioner died for which the petitioner could not cross-examine the Commissioner. He further submits that the petitioners have raised several objections against the Commissioner's report and unless the same is considered, the report cannot be marked as an exhibit.

3. Order XXVI Rule 10(2) of the Code of Civil Procedure states that the report the Commissioner and the evidence taken by him but not the evidence without the report

shall be an evidence in the suit and shall form part of the record, but the court or with the permission of the court, any of the parties to the suit may examine the Commissioner personally in open court touching any of the matters referred to him or mentioned in his report or as to his report or as to manner in which he has made the investigation. Upon a reading of the provisions of Order XXVI Rule 10(2), it is evident that the report of the Commissioner and the evidence taken by him shall be an evidence in the suit and shall form part of the record and a party to a suit only has a right to cross-examine the Commissioner. Failure to cross-examine the Commissioner for reasons beyond the control of the petitioner cannot be a ground for expunging the report of the Commissioner as urged by the learned advocate for the petitioners.

4. The opposite parties herein filed an application praying for marking the said Commissioner's report as an exhibit. The learned trial Judge has directed such application to be considered at the time of final argument of the suit. The petitioners being the defendants cannot be said to be aggrieved by such order.

5. For such reasons, this Court is not inclined to interfere with the order impugned. CO 122 of 2025 is, accordingly, dismissed, without, however, any order as to costs.

6. Parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

7. Urgent photostat certified copies of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Hiranmay Bhattacharyya, J.)