

C.O. 248 of 2025
With
CAN 1 of 2025

Sasthi Pada Nandy & Anr.
-versus-
Ganesh Chandra Patra.

Mr. Rupayan Deb
..for the petitioners

Mr. Habibur Rahaman
Mr. Moidul Islam Khayal
Mr. Sumit Naskar
Mr. Nurul Amin Sarkar
Mr. Archishman Singh
..for the opposite party

Affidavit of service filed today is taken on record.

Re: CAN 1 of 2025

This is an application explaining the delay in filing the application under Article 227 of the Constitution of India. This Court finds that acceptable grounds have been made out in the said application.

For such reason, this Court is inclined to hear out the application under Article 227 of the Constitution of India on merits.

In view thereof, the application being CAN 1 of 2025 stands allowed.

C.O. 248 of 2025

This application under Article 227 of the Constitution of India is at the instance of the defendants and is directed against an Order No. 33 dated 11th June,

2024 passed by the Civil Judge (Junior Division), 1st Court, Barasat in Title Suit No. 452 of 2021.

The plaintiff is aggrieved by the portion of the order by virtue of which the Commissioner's report which was filed on March 15, 2024 was accepted.

Learned advocate for the petitioners submits that the Commissioner's report was accepted without giving any opportunity to the petitioners to file a written objection.

The learned advocate appearing for the opposite party makes his submission supporting the impugned order.

It is not in dispute that the Commissioner was appointed under the provisions of Order 26 Rule 9 of the Code of Civil Procedure. Order 26 Rule 10 deals with the procedure of Commissioner. Sub-rule 1 of Rule 10 of Order 26 states that the Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the court. Sub-rule 2 of Rule 10 deals with report and depositions to be evidence in suit. It states that the report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be 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 the manner in which he has made the investigation.

Upon a bare reading of Rule 10 of Order 26 this Court is of the considered view that filing of objection against the Commissioner's report is not contemplated under the said provision. On the other hand the said provision lays down that the report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record. This is exactly what has been done by the learned trial judge by the order impugned. If, however, the petitioners are willing to examine the Commissioner the petitioners have to take steps in accordance with the provisions of sub-rule 2 of Rule 10 of Order 26 of the Code. Therefore, the impugned order does not call for any interference.

With the above observations, C.O. 248 of 2025 stands disposed of.

No order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)