

12.06.2025
Item No.07
Ct. No.446
RP

CO 419 of 2025

Gopal Chandra Das & Ors.
Vs.
Madhusudan Das & Ors.

Mr. Sukanta Chakraborty
Mr. Anindya Halder
..... for the Petitioners
Mr. Tapas Kumar Dey
Mr. Rakesh Roy
..... for the Opposite Party

1. This revisional application is directed against the order of refusal to the prayer of the petitioner for appointment of an advocate commissioner pursuant to the direction of the Hon'ble High Court , on 14th January, 2025 passed by the learned Civil Judge, Senior Division, Serampore, Hooghly in Title Suit No.18 of 2018 .
2. The dispute pertains to construction of a house under the scheme of Pradhan Mantri Awas Yojana (PMAY) in the year 2018. The petitioners/plaintiffs filed a suit for partition and permanent injunction against the opposite parties being Title Suit No.18 of 2018 alongwith a prayer for temporary injunction, which was refused on 8th February, 2018.
3. A miscellaneous appeal, being Misc. Appeal No.2 of 2018, was filed against such order which was allowed on contest after setting aside the order passed by the learned Civil Judge (senior division)

and directed the parties to maintain status quo over the suit property till disposal of the suit.

4. Subsequently, in the year 2023 the opposite party no.1 filed an application under Section 151 of the Civil Procedure Code before the said Court with a prayer for an order, permitting him to raise construction over the suit property under the scheme of PMAY. The said application was rejected by the learned trial Court followed by a revisional application before the Hon'ble Court.

5. By an order dated 8th December, 2023, a coordinate Bench of this Court disposed of the same with the following directions.

“(a) The petitioner will file an application under Order XXXIX Rule 4 of the Code of Civil Procedure along with all details including the fact of sanction of funds in favour of the petitioner, under the housing scheme.

(b) The petitioner shall also file an application for appointment of an Advocate Commissioner, who shall visit the locale and ensure that such construction is being made in accordance with the scheme and the model plan.”

The Hon'ble Court also observed that the construction if allowed shall be restricted to the area in occupation of the petitioner.

6. The learned advocate appearing for the petitioners submits that in terms of the said direction an application under order 39 Rule 4 of the Civil Procedure Code was filed and also the application under Order 39 Rule 7 of the Civil Procedure Code for appointment of an advocate commissioner.
7. By an order dated 2nd January, 2025, the learned trial Court heard the petition under Order 39 Rule 4 and accordingly allowed the same giving an opportunity to the defendant no.3, the opposite party herein, to raise construction of pucca house under the government scheme subject to the condition that he shall strictly comply with the direction given by the Hon'ble Court and also directed to file the completion report. Thereafter on 14th January, 2025 the record was put up for clarification of the order of the Hon'ble High Court. It was argued before the learned Court that pursuant to the direction of the Hon'ble Court an application for appointment of an advocate commissioner is also to be considered since he shall have to visit the locale and ensure that the said construction is being made in accordance with the scheme and the model plan. It was further pleaded that both the petitions are to be disposed of at a time.
8. The said submission was vehemently opposed by the learned advocate for the defendant and the learned

Court made certain observations regarding appointment of an advocate commissioner.

9. The observations made by the learned Court is practically modification of the order passed by the Hon'ble High Court which is beyond the scope and authority of the learned trial Court. The learned Court observed in its order dated 14th January, 2025 that the Court does not find any merit in the submission advanced by the learned lawyer of the plaintiff and the next date was fixed for hearing. According to the learned advocate for the petitioners by virtue of the said observation practically the learned Court has refused the prayer for appointment of an advocate commissioner at this stage, which will highly prejudice the interest of the present petitioner since the opposite parties have raised construction violating the scheme of PMAY and unless the advocate commissioner is appointed and submit a report taking note of such violation it will create further complication and also frustrate the purpose of filing of the suit.
10. Learned advocate appearing on behalf of the opposite parties submits that the petitioners have interpreted the order of the learned trial Court on erroneous notion as the application under Order 39 Rule 7 was not disposed of and it was fixed for hearing. It is also submitted that the construction is

to be raised following the rules of PMAY and any violation of the same he will not be entitled to have further financial benefit in terms of the scheme. He also submitted that the construction is complete and only the plastering and colouring of outside wall is pending.

11. On careful perusal of the record it transpires that the order of a coordinate Bench of this Hon'ble Court was passed when the revisional application was taken up for hearing for modification of an order of status quo on the ground that the name of the petitioner before the Hon'ble Court was listed as the beneficiary under PMAY and as the funds were allotted the petitioners wanted to construct a pucca house, after demolition of the mud house.

12. The coordinate bench was of the opinion that the learned trial Court failed to take into consideration that once the fund has been sanctioned the matter requires consideration and ultimately was of the view that the order of status quo as granted by the learned appellate Court requires modification. However, in order to prevent any violation of the scheme certain directions were given to the petitioner to file an application for appointment of an advocate commissioner, who shall visit the locale and ensure that such construction is

being made in accordance with the scheme and model plan.

13. After giving a cursory glance to the said direction it is clear that that the petitioner was directed file an application under Order 39 Rule 4 along with an application for appointment of an advocate commissioner. The learned trial Court practically exceeded its jurisdiction by expressing views on the necessity of appointing an advocate commissioner ,effectively interpreting an order beyond its scope . This raises questions about the court's authority and potential overreach. It is obvious that after making such observation there remains nothing to hear out the application under Order 39 Rule 7. Therefore, in the light of the above discussion and considering the direction of a coordinate Bench of this Court this Court is of the view that the order passed by the learned trial Court has exceeded its jurisdiction and, therefore, is liable to be set aside. However, as it is informed by learned advocate of the opposite party that the construction is also complete excepting the outer wall plastering and colouring, there is no bar in appointing an advocate commissioner at this stage, who will submit his report after visiting the locale and after comparing the same with the scheme that whether

the construction is being made in accordance with the scheme and model plan.

14. Therefore, the order passed by the learned Court is hereby set aside with a direction to hear out the application filed under Order 39 Rule 7 afresh after giving an opportunity of hearing to both the parties in terms of the direction given by a coordinate bench of this Court in CO 1208 of 2023.

15. In view of the aforesaid, this revisional application stands disposed of. However, considering the long pendency of the matter the learned Court below is requested to take steps for expeditious disposal of the case.

16. Urgent Photostat certified copy of this order, if applied for, be delivered to the learned advocates for the parties, upon compliance of all formalities.

[CHAITALI CHATTERJEE (DAS), J.]