

CO/2421/2024

**BIRENDRA NATH DAS AND ANR.
VS.
SUPRIM SARDAR AND ANR.**

Mr. Sabyasachi Mondal, Adv.
Mrs. Puja Naskar, Adv.
Ms. Payel Khanra, Adv.

...For the Petitioners

1. This revisional application has been filed against the orders dated 31st July, 2023, and 5th October, 2023, as passed by the learned Civil Judge, Junior Division, 3rd Court, Baruipur, South 24 Parganas in connection with Title Suit No.85 of 2015.
2. None appears on behalf of the opposite parties.
3. On earlier occasion the affidavit-of-service as filed by the petitioners was kept with the record which shows that the notice could not be delivered to the opposite parties and the unserved postal envelope was returned to the petitioners. Accordingly, direction was given to serve afresh on the learned advocate appearing before the trial court on behalf of the opposite parties. Today in compliance with the same, an affidavit-of-service has been filed showing that the copy has been received by the learned advocate on 13th June, 2025. Let the said affidavit-of-service be kept with the record.
4. The matter pertains to an application filed under Order 26 Rule 9 of the Code of Civil Procedure by the present

petitioners before the learned Civil Judge (Junior Division), 3rd Court, Baruipur, where a suit for declaration and permanent injunction was filed. Initially that application was not entertained by the learned court and challenging the same one revisional application was filed before the Hon'ble Court.

5. Vide an order dated 6th June, 2023, a co-ordinate Bench of this Court was pleased to set aside the order dated 4th October, 2018, passed by the learned Civil Judge (Junior Division), 3rd Court, Baruipur and a direction to appoint a local investigation commissioner within a period of four weeks from the date of communication of the order was given to the learned trial court. Thereafter, the petitioners filed an application on 18th July, 2023, along with the photocopy of the order passed by the Hon'ble Justice Ajoy Kumar Mukherjee as passed on 6th June, 2023.
6. On perusal of such order dated 31st July, 2023, it appears that the learned trial court recorded the order of the Hon'ble Court and sent the matter to the court of learned Civil Judge (Senior Division), 1st Court, Alipore, with a request to appoint a commissioner for holding a local investigation. Accordingly, Mr. Banibrata Mukherjee an engineer was appointed as commissioner. The petitioner, thereafter, filed further application on 5th October, 2023, with a prayer to change said Mr. Banibrata Mukherjee and to appoint a survey passed advocate commissioner for proper

assessment of the plots or commission pursuant to the direction of the Hon'ble Court.

7. The learned trial court vide an order dated 5th October, 2023, refused such prayer on the ground that Mr. Banibrata Mukherjee was appointed as a Survey passed commissioner by the learned Civil Judge (Senior Division), 1st Court, Alipore, and the Court of Civil Judge (Junior Division) cannot make any request to change the name of the advocate commissioner since the appointment order was passed by the learned Civil Judge (Senior Division), 1st Court, Alipore.
8. It is submitted by the learned advocate appearing on behalf of the petitioners that no such direction was passed by the Hon'ble Court upon the learned Civil Judge (Junior Division), 3rd Court, Baruipur, to make such request to the learned Civil Judge (Senior Division), 1st Court, Alipore, for appointment of Survey passed advocate commissioner.
9. This court is also unable to fathom it as to why the learned Civil Judge (Junior Division), 3rd Court, Baruipur, made request to the learned Civil Judge (Senior Division), 1st Court, Alipore in order to appoint a local investigation commissioner and no reasoning was assigned for the same. Interestingly vide such order dated 5th October, 2023, the prayer of the petitioners to change the name of the advocate commissioner was not considered only on the score that the appointment was given by the learned Civil

Judge (Senior Division) and hence, the Civil Judge (Junior Division) has no authority to modify such order.

10. That apart on careful perusal of the order of the Hon'ble Court it appears that the said revisional application was filed against the order passed by the learned Civil Judge (Junior Division), 3rd Court, Baruipur, and not by the learned Civil Judge (Senior Division), 1st Court, Alipore. Therefore, it was the direction of the Hon'ble Court upon the learned Civil Judge (Junior Division), 3rd court to do the needful.
11. In the above factual backdrop, this Court is of the view that the learned Civil Judge (Junior Division), 3rd Court, Baruipur, must comply with the direction of the Hon'ble Court regarding the appointment of local investigation commissioner within fortnight after giving opportunity of hearing to both the learned advocates appearing on behalf of the parties.
12. Under the facts and circumstances as discussed above, the order dated 31st July, 2023 and 5th October, 2023, are hereby set aside.
13. It is made clear since the opposite parties have not entered appearance in this case, and allegations, if any, levelled against the opposite parties are deemed to be not admitted.
14. With the aforesaid observation and direction, the revisional application is disposed of.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]