

Sl.34  
25.08.2025  
Court No.6  
BP

C.O. 2957 of 2025

Amit Ratan Hazra  
-versus-  
Asok Kumar Rakshit & Ors.

Mr. Abhilash Chatterjee  
... for the petitioner

Mr. Ayan Banerjee  
Mr. Dhiman Banerjee  
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the pre-emptee and is directed against an order being no.17 dated July 31, 2025 passed by the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Chandernagore, Hooghly in Miscellaneous Pre-Emption Case No. 7 of 2024.

By the order impugned the prayer of the petitioner to cross-examine the Investigation Commissioner stood rejected and the Commissioner's report stood accepted.

The learned advocate appearing for the petitioner submits that the petitioner could not appear when the – learned trial judge took up the hearing on the point of acceptance of Commissioner's Report but he subsequently appeared and filed a written objection to the Commissioner's report. He submits that the Commissioner's report could not have been accepted without giving an opportunity to the petitioner to cross-examine the Investigation Commissioner.

Mr. Banerjee, learned advocate appearing for the opposite parties submits that the report of the Investigation Commissioner automatically forms part of the record and shall be an evidence in the suit. He submits that since on the date fixed for cross-examination of the Commissioner the petitioner did not appear at the schedule time and the learned trial judge closed the cross-examination of the petitioner.

Order 26 Rule 10(2) of the Code of Civil Procedure 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.

A bare reading of the provisions of Order 26 Rule 10(2) of the Code of Civil Procedure would imply that the report of the Commissioner and the evidence taken by him shall automatically form part of the record and shall be an evidence in the suit. However, the parties to the suit shall have a right to cross-examine the Commissioner on the issues as provided under Order 26 Rule 10(2) of the Code of Civil Procedure. Though the petitioner was not present at the schedule time but the

petitioner appeared immediately thereafter and filed a written objection to the Commissioner's Report.

In view thereof, this Court is inclined to grant a last opportunity to the petitioner to cross-examine the Investigation Commissioner. It appears from the impugned order that 11<sup>th</sup> November, 2025 is fixed for peremptory hearing in the suit.

C.O. 2957 of 2025 stands disposed of by requesting the learned Civil Judge (Junior Division), 2<sup>nd</sup> Court, Chandernagore, Hooghly to pass an order directing the Investigation Commissioner to appear on the next date fixed in the suit i.e. on 11<sup>th</sup> November, 2025 and on such date the petitioner shall be permitted to cross-examine the Investigation Commissioner.

It is, however, made clear that if the investigation Commissioner appears on the date fixed and the petitioner fails to cross-examine the Investigation Commissioner on that date, no further opportunity shall be granted to the petitioner to cross-examine the Commissioner.

It is, however, made clear that if for any reason whatsoever the Investigation Commissioner could not remain present on 11<sup>th</sup> November, 2025, the learned trial judge is requested to fix a date for appearance of the Investigation Commissioner to face the cross-examination by the petitioner.

With the above observations and directions, C.O. 2957 of 2025 stands disposed of.

There shall be, however, 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.)**