

Sl.2
09.09.2025
Court No.6
BP

C.O. 3227 of 2025

Sri Prabir Ranjan Basu
-versus-
Debjani Sarkar (Ghosal) & Ors.

Mr. Tanmoy Mukherjee
Mr. Debdipto Banerjee
Mr. Soumen Banerjee
Mr. Rudranil Das
... for the petitioner

Mr. Gopal Chandra Ghosh, Sr. Advocate
Ms. Sunandana Saha
..for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the second defendant and is directed against the orders dated 14th March, 2023 and August 6, 2025 both passed by the learned Civil Judge (Junior Division), 1st Court, Sealdah in Title Suit No. 71 of 2011.

By the order dated 14th March, 2023 the report filed by the Survey Passed Commissioner on 14th January, 2022 was accepted. By the said order the written statement filed by the defendant no.2 at a belated stage was also accepted subject to payment of cost. By the order dated 6th August, 2025 the petition dated 4th April, 2023 stood rejected.

Mr. Mukherjee, learned advocate appearing for the defendant no.2 /petitioner submits that the Commissioner's report was accepted without giving any opportunity to the second defendant to file any written objection to the Commissioner's report. He further

submits that no opportunity was given to the second defendant to cross-examine the Survey Passed Commissioner. He further submits that the written statement was filed belatedly and on the prayer of the second defendant the learned trial judge accepted the written statement subject to payment of cost. Since the petitioner has a right to contest the said suit the petitioner should be afforded an opportunity to file a written objection to the Commissioner's report and also to cross-examine the Commissioner.

Mr. Ghosh, learned senior advocate appearing for the plaintiffs/opposite parties submits that the defendant no.2 is a transferee pendente lite who has been subsequently impleaded in the said suit. He further submits that the petitioner herein did not file any written objection to the Commissioner's report in spite of several opportunities being given to the said defendant. He further submits that the plaintiffs/opposite parties filed an application praying for correction of a premises number in the Commissioner's report which was rejected by the order dated 6th August, 2025. He submits that since the Commissioner's report automatically forms part of the record and is an evidence in the suit the Commissioner's report once accepted cannot be rejected on the prayer of the petitioner.

Heard the learned advocates for the parties and perused the materials placed.

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.

From a bare reading of Order 26 Rule 10(2) of the Code of Civil Procedure it follows that the report of the Commissioner and the evidence taken by him shall form part of the record. Thus the learned trial judge was right in accepting the Commissioner's report.

There is no provision for expunging the Commissioner's report. Order 26 Rule 10(3) of the Code, however, provides that where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further enquiry to be made as it shall think fit.

However, at the relevant point of time the written statement of the second defendant was yet to be accepted. After accepting the Commissioner's report, the learned trial judge allowed the prayer for condonation of

delay in filing the written statement subject to payment of cost. Such order has not been challenged by the plaintiffs/opposite parties herein.

Since the written statement has been accepted, this Court is of the considered view that the defendant no.2/petitioner should be allowed an opportunity to file a written objection to the Commissioner's report only for the purpose of indicating the points on which he seeks to cross-examine the Commissioner. It is well settled that any of the parties to the suit has right to cross-examine the Commissioner 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. It is, however, made clear that the objection shall be restricted only within the scope of Order 26 Rule 10(2) of the Code of Civil Procedure and the same cannot travel beyond the scope of the said provision. This Court is inclined to permit the petitioner to file written objection to the Commissioner's report keeping in mind the provision of Order 26 Rule 10(3) of the Code.

In the light of the aforesaid observation, C.O. 3227 of 2025 stands disposed of by allowing the second defendant/petitioner herein to file a written objection to the Commissioner's report on or before 17th September, 2025 after serving an advance copy of the same to the learned advocate for the plaintiff before the learned trial

judge. If the objection is filed within the time limit mentioned hereinbefore the learned trial judge shall fix a date for cross-examination of the Commissioner by the defendant no.2.

Since Mr. Mukherjee, learned advocate appearing for the petitioner did not raise any objection with regard to allowing the prayer of the plaintiff for correction of the premises number in the Commissioner's report, this Court in exercise of powers under Article 227 of the Constitution of India allows the petition dated 14th June, 2022 and the Commissioner is directed to put the correct premises number in the case map.

Considering the fact that the suit is of the year 2011 the learned Civil Judge (Junior Division), 1st Court, Sealdah is requested to make an endeavour to dispose of the Title Suit No. 71 of 2011 as expeditiously as possible but preferably within a period of one year from the next date fixed without granting any unnecessary adjournments to either of the parties.

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.)