

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

CO 4383 of 2023

Nilima Karak & Ors.

Vs.

Rebati Bhusan alias Goutam Das & Ors.

Mr. Arnab Roy

Mr. Satyam Mukherjee

Mrs. Sayani Ahmed

... For the petitioners

Mr. Sukumar Ghosh

Mrs. Moumita Ghosh

... For the opposite party no.1

1. This revisional application has been filed by assailing two orders, i.e., order no.147 dated 30th January, 2023 and order no.161 dated 1st August, 2023 passed in connection with Title Suit No.99 of 2008 by the learned Civil Judge (Junior Division), Additional Court, Tamluk, Purba Medinipur,

2. Both the learned counsel appearing on behalf of the parties to this revisional application have made their respective submissions before this Court.

3. It is not disputed that this is a suit for declaration and permanent injunction where plaintiffs/petitioners herein filed an application under Order XXVI Rule 9 of the Code of Civil Procedure (in short, CPC) which was considered and allowed by the learned Trial Court and the Commissioner had already submitted his report. It is

also not disputed that the plaintiffs/petitioners herein filed a written objection against the Commissioner's report and that was dealt with by the order dated 30th January, 2023 where the learned Trial Judge refused to consider the written objection filed by the plaintiffs/petitioners herein without going into its merit only because of filing of one adjournment application on behalf of the plaintiffs/petitioners herein and accepted the Commissioner's report provisionally.

4. Another application was also filed on behalf of the plaintiffs/petitioners herein for examining the Commissioner on commission because of his illness. That application was also rejected on the ground of acceptance of Commissioner's report provisionally.

5. Thereafter, the plaintiffs/petitioners herein filed an application for appointment of new Commissioner under Order XXVI Rule 9 of the CPC which was further dealt with by the learned Trial Judge by his order dated 1st August, 2023 which was also rejected on the ground of acceptance of earlier report of Commissioner.

6. After hearing submissions advanced on behalf of the learned counsel for the parties as well as after considering both the orders impugned in this revisional application, I find that the application dated 8th July, 2022 for examination of Commissioner on commission was rightly refused on the ground of acceptance of Commissioner's report, though provisionally.

7. So far as the order dated 1st August, 2023 is concerned, I find nothing to interfere with this order wherein the learned Trial Judge refused to entertain the second application under Order XXVI Rule 9 of the CPC while the learned Trial Judge already allowed the first application under Order XXVI Rule 9 of the CPC and Commissioner submitted his report.

8. On careful perusal of the order dated 30th January, 2023 with respect to the written objection dated 17th May, 2022 filed by the plaintiffs/petitioners herein, the learned Trial Judge accepted the Commissioner's report provisionally without disposing of the written objection dated 17th May, 2022, rather rejected the same on the ground of prayer for adjournment on the date of hearing.

9. Considering all facts and circumstances as discussed above, I find that an opportunity ought to have been given to the plaintiffs/petitioners herein regarding written objection against the Commissioner's report.

10. In the aforesaid view of the matter, the order dated 30th January, 2023 with respect to the written objection dated 17th May, 2022 stands set aside.

11. Learned Trial Judge is requested to dispose of the written objection filed by the plaintiffs/petitioners herein against the Commissioner's report after giving opportunity of hearing to both the parties to the suit, as expeditiously as possible.

12. With the above observation, the revisional application stands disposed of.

13. All parties shall act on the basis of a server copy of this order duly downloaded from the official website of this Court.

14. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)