

10.04.2026
Ct. No. 30
S.L. No.27
SM

CO 2829 of 2023
With
IA No.: CAN 3 of 2025
Daly Das @ Dolly Das
Versus
Arnab Mitra & Ors.

Mr. Dhananjoy Banerjee
Md. Abdur Rakib
.....for the petitioner/plaintiff
Mr. Debasish Barik
.....for the opposite party no. 1

- 1.** Affidavit-of-service filed be kept with the record.
- 2.** CO 2829 of 2023 is taken up along with CAN 4 of 2026 for hearing, the petitioner herein has challenged an order No. 212 dated 10-07-2023 passed by the Court of the Learned Civil Judge (Junior Division), 4th Court at 43 Serampore, Hooghly in Title Suit No. 43 of 2005/285 of 2013 (Daly Das -Vs-Reba Mitra and Ors.) rejecting a prayer for recalling of an order directing evidence, without waiting for a report under Order XXVI Rule 9 of the Code of Civil Procedure, 1908.
- 3.** Vide the impugned order the learned Trial Court has rejected an application filed by the plaintiff/petitioner herein praying for submission of the investigation report under Order 26 Rule 9 CPC prior to commencement of evidence.

4. The Trial Court was of the view that as the matter was pending for over a decade awaiting the report, the Court to expedite the hearing in the suit directed the report would be awaited along with evidence being adduced parallelly. But it appears that till date no report has been filed.

5. Considering the impugned order, this Court is of the view that the learned Judge should have taken necessary steps to ensure that the report is submitted within a specified period and without doing so has again permitted the Investigation Commissioner to proceed indefinitely. This Court also fails to understand as to why this Court has directed the concerned BL & LRO to secure the presence of the Amin, as no reasons for the same have been given in the said order.

6. Accordingly, the impugned order being prima facie not in accordance with law is hereby set aside.

7. The Trial Court is directed to ensure that the investigation under Order 26 Rule 9 CPC is completed within three months from the date of this order and it is only on receipt of the said report, the Trial Court shall proceed in accordance with law and dispose of the suit expeditiously.

8. **CO 2829 of 2023** along with **CAN 4 of 2026** stands disposed of.

9. Interim order, if any, stands vacated.

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

[Shampa Dutt (Paul). J]