

21.04.2026
Ct No.2
D/L 12
Mujahid

CO 2940 of 2024

Anjan Chanda & Ors.
Vs.
Maya Mitra & Anr.

Mr. Sanat Kumar Roy
Mr. Atanu Basu

...for the petitioners

Ms. Sabnam Sultana

...for the opposite parties

1. Present petition has been filed challenging the order no.245 dated 19th July, 2024. The limited grievances of the petitioners are that the learned Commissioner appointed by the learned trial court vide order dated 22nd July, 2022 executed the commission without serving the notice upon the petitioners/opposite parties.

2. Learned counsel for the petitioners submits that this fact was admitted by the commissioner before the learned trial court that the notice was served only by hand upon the learned advocate.

3. Learned counsel for the opposite parties has refuted the averments and submits that the learned trial court inter alia held that notice was duly served upon the learned advocate of the opposite parties.

4. Upon hearing of the parties and perusal of the record, the court finds that the application under order 26 Rule 9 was disposed of by the learned trial court ex parte vide order dated 22nd July, 2022 appointing Sri Kashinath Ghosh as learned Commissioner. The local commissioner was directed to visit the site after servicing notice upon the relevant person through their learned advocates.

5. The impugned order reflects that the notice was served by hand upon the learned advocates. However, admittedly, there is no proof of service upon the petitioners or the learned advocates. The service of any such notice has been denied by the petitioners before the learned trial court as well as before this court.

6. The court considers that first and foremost requirement of principle of natural justice that an opportunity of being heard/participation should be given to the parties. It has been stated at bar that Sri Kashinath Ghosh, learned Commissioner is no more. Without going into the factual matrix of the case and in order to address the grievance and further more for the proper adjudication of matter in dispute the court directs that learned trial court shall appoint fresh person as learned Commissioner who shall execute the commission afresh on or before 22nd May, 2026. The local commissioner shall send a message or e-

mail upon the parties on the following mobile number/e-mail:-

Mr. Anjan Chanda (9143154434) and

Ms. Maya Mitra (9674498875) /
sabnam.attorney@gmail.com

7. Learned counsel for the petitioners submits that petitioners shall pay a fee of Rs.10,000/-, learned Commissioner upon execution of the commission.

8. In view of the discussion made hereinabove, the order dated 19th July, 2024 is set aside. The matter is remitted back to the learned trial court for appointment of commissioner and consideration of the report submitted by the learned Commissioner after fresh execution of the commission.

9. CO 2940 of 2024 stands disposed of.

10. All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

(Dinesh Kumar Sharma, J.)