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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/30/2026
WITH CS/45/2013
IA NO: GA/1/2026
TURNER MORRISON LTD
VS
BHARAT COKING COAL LIMITED

BEFORE :
THE HON'BLE JUSTICE SABYASACHI BHATTACHARYYA
HON'BLE JUSTICE BISWAROOP CHOWDHURY
Date : 6th May, 2026

Appearance:
Mr. Rupak Ghosh, Adv.
Mr. Varun Kothari, Adv.
Mr. Subhransu Ganguly, Adv. ...for appellant.

Mr. Tilak Bose, Sr. Adv.
Mr. Rohit Mukherjee, Adv.
Mr. Pranit Bag, Adv. [VC],
Mr. Debabrata Das, Adv.
Mr. Saptarshi Mukherjee, Adv.
Mr. Tirthankar Nandi, Adv. ...for respondent.

The Court : -

1. The present appeal has been preferred against an order dated February 10, 2026 whereby the suit court directed the learned Commissioner, earlier appointed by an order of a Division Bench, to visit the suit property and file a report with regard to the conditions of the suit building pertaining to the area in possession of the defendant.
2. For the records, the matter arises out of an application under Chapter XIII A of the Original Side Rules of this Court, in respect of a prayer for eviction of the defendant/respondent from the subject property. A counter suit at the behest of the defendant/respondent was also being heard analogously with the same, seeking a declaration that the defendant is the

owner of the suit property by operation of the Coking Coal Mines (Nationalisation) Act, 1972, Coal Mines (Taking Over of Management) Act, 1973 and Coal Mines (Nationalisation) Act, 1973.

3. In the said suit, an order was passed on September 29, 2015 directing the defendant/respondent to pay a certain amount, incorporating a default clause to the effect that in the event such payment was not made, a decree of eviction would follow.
4. The said judgment/order was challenged in an appeal.
5. The concerned Division Bench taking up such appeal, vide judgment dated December 20 2019, observed inter alia that irrespective of whether the trial Court is minded to pass a decree for eviction against the appellant or not, a Commissioner will be appointed by the trial Court for the purpose of ascertaining the monies payable by the appellant therein from June 2012 onwards, whether on account of occupation charges or mesne profits. It was further directed that the Commissioner would also assess the amount that the appellant was liable to pay on account of municipal rates and taxes from 1988 till the date of the Commissioner filing the report.
6. Pursuant to the said direction, a Commissioner was appointed. Shorn of unnecessary details, during subsistence of the commission proceeding, a prayer was made by the respondent before the learned Advocate Commissioner to the effect that the Commissioner ought to visit the suit property, situated at 6, Lyons Range, Kolkata.
7. However, the Commissioner turned down such prayer, upon which an application seeking similar relief was made before the suit Court. Before disposal of the said application, the Commissioner filed his report.

- 8.** Irrespective of such filing, however, the learned Single Judge taking up the suit decided such application and turned down the prayer for the Commissioner to visit the suit premises on similar ground as the Commissioner, observing independently that the defendant had occasion to adduce evidence before the learned Commissioner but abstained from doing so and that when the defendant did not adduce any evidence, it cannot be enjoined upon the learned Commissioner to value the property by physically visiting the same which would, in the opinion of the learned Single Judge, be fishing out of evidence. The suit Court further observed that the learned Commissioner also considered the point raised by the defendant and that the suit Court was not the appellate authority on the observation of the Commissioner.
- 9.** Thereafter, an exception was filed by the defendant/respondent to the Commissioner's report and the fate of the Commissioner's report is still pending before the suit Court.
- 10.** At this juncture, the learned suit Court, by the impugned order dated February 10, 2026, observed that the previous order rejecting the application for the Commissioner to visit the suit property had been on a different context and directed the learned Commissioner to visit the property and file a report with regard only to the condition of the building pertaining to the area in possession of the defendant. It was further observed by the suit Court that to further proceed with the adjudication of the dispute, it is necessary to have a clear picture as to the condition of the building confronted by the learned advocate representing the defendant as also the extent of possession of the same, if at all.

11. At the outset, learned senior counsel for the respondent raises an objection as to the maintainability of the appeal on the ground that the impugned order does not qualify as a 'judgment' which can be assailed within the contemplation of Clause 15 of the Letters Patent.
12. To controvert such contention, learned counsel for the appellant cites *Shaym Sel Power Limited And Anr. Vs. Shyam Steel Industries Limited*, reported at 2022 SCC OnLine SC 313. In the said judgment, certain observations were made by the Hon'ble Supreme Court, which will be referred to later in this judgment.
13. Be that as it may, learned counsel for the appellant assails the impugned order primarily on the ground that the direction contained in the impugned order is barred by the principle of res judicata, which is operative at different stages of the same suit/proceeding as well.
14. It is submitted that after the learned Commissioner as well as the learned suit Court itself refused the self-same prayer, the learned Single Judge ought not to have directed the Commissioner to visit the premises.
15. It is further pointed out that being aggrieved by the initial order of the suit Court refusing a similar application of the defendant/respondent, the latter had preferred an appeal which was ultimately withdrawn by the defendant/respondent, thus permitting the refusal to attain finality.
16. In support of the contention in respect of the principle of res judicata being operative in the self-same proceeding (at different stages) learned counsel for the appellant cites *Sulthan Said Ibrahim vs. Prakasan & Ors.* [Civil Appeal No. 7108/2025(@ Special Leave Petition (C) No.4307 of 2022)].
17. Learned counsel further argues that even apart from the principle of res judicata, the general doctrine of comity of courts/judicial comity is also

applicable in the context, since after a co-ordinate Bench, in the self-same suit, having turned down a similar prayer, the learned Single Judge ought not to have directed the Commissioner to visit the premises.

18. In support of such proposition, learned counsel cites *Rajesh Goyal vs. M/s. Laxmi Constructions & Ors.* [Civil Appeal No._____ of 2026(@ Special Leave Petition (Civil) No.27184 of 2025)].
19. Lastly, learned counsel for the appellant relies on *The Institution of Engineers (India) & Anr. Vs. Bishnu Pada Bag & Anr.*, reported at AIR 1978 Calcutta 296, where a co-ordinate Bench of this Court had pointed out that an inventory commission cannot be issued for the purpose of fishing out some evidence which may be adduced by either of the parties in the suit.
20. Learned counsel submits that it is on such ground, inter alia, that the learned Single Judge as well as the Commissioner had earlier refused the prayer of the defendant/respondent for the Commissioner to visit the suit premises.
21. In any event, it is submitted by the appellant that the defendant/respondent cannot fill up its lacunae in evidence submitted before the Commissioner to seek fishing out of evidence by a personal inspection at the behest of the Commissioner.
22. Learned senior counsel appearing for the defendant/respondent refutes the arguments of the appellant and submits, by taking the Court in a nutshell through the history of the litigation, that for the assessment of the occupation charges, the Commissioner was required to visit the premises in question.

- 23.** Learned senior counsel also places certain portions of the Commissioner's report and seeks to impress upon the Court that the Commissioner proceeded on a palpably erroneous and perverse premise that there was an admission on the part of the respondent as to the quantum payable by the respondent, whereas such quantum found place in the pleadings and annexures of the plaintiff/appellant and not the respondent.
- 24.** Secondly, it is contended by the respondent that even if there was insufficient evidence before the Commissioner, it was the incumbent duty of the Commissioner, within the contemplation of Order XXVI Rule 9 of the Code of Civil Procedure, to himself ascertain as to the condition of the premises and as to the occupation charges and other monies payable by the defendant.
- 25.** Having not done so, the learned Single Judge was well within her jurisdiction to direct visual inspection for the purpose of ascertaining the condition of the premises.
- 26.** Learned senior counsel relies on the language of Order XXVI Rule 9 of the Code to further argue that the Court may, at any stage of the suit or proceedings, exercise its *suo moto* powers to direct an investigation to be held, which was precisely done by the learned Single Judge in the impugned order.
- 27.** Learned senior counsel next argues that there was no finality to the Commissioner's report lent by the impugned order. Thus, it is argued that the propositions laid down in *Shyam Sel (supra)* are not germane for this Court to entertain the appeal.

- 28.** Upon hearing learned counsel for the parties, we choose to deal with the issue of maintainability at the outset, since it hits at the root of the jurisdiction of this Court to take up the appeal.
- 29.** Paragraphs 17 and 18 of *Shyam Sel (supra)* are germane in the context and are set out hereinbelow.

“17. It could thus be seen that though this Court has held that the term ‘judgment’ used in Letters Patent could not be given a narrower meaning as is given to the term ‘judgment’ used in [CPC](#) and that it should receive a much wider and more liberal interpretation, however, at the same time, each and every order passed by the trial judge could not be construed to be a ‘judgment’ inasmuch as there will be no end to the number of orders which would be appealable under the Letters Patent. It has been held that the word ‘judgment’ has undoubtedly a concept of finality in a broader and not in a narrower sense. It has been held that where an order vitally affects a valuable right of the defendants, it will undoubtedly be treated as a ‘judgment’ within the meaning of Letters Patent so as to be appealable to a larger Bench.

18. It has been held that most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of [Order XLIII Rule 1 CPC](#) and would be ‘judgments’ within the meaning of the letters patent and, therefore, appealable. However, there may be interlocutory orders which are not covered by [Order XLIII Rule 1 CPC](#) but which also possess the characteristics and trappings of finality inasmuch as such orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. It has further been held that however, for such an order to be a ‘judgment’, an adverse effect on the party concerned must be direct and immediate rather than indirect or remote. Various illustrations of interlocutory orders have been given by this Court in para (120), which could be held to be appealable. This Court held that though any discretion exercised or routine orders passed by the trial Judge in the course of the suit may cause some inconvenience or, to some extent, prejudice to one party or the other, they cannot be treated as a ‘judgment’ unless they contain the traits and trappings of finality. This Court has expressed in para (122) that though it had, by way of sample, laid down various illustrative examples of an order which may amount to a judgment, it would not be possible to give such an exhaustive list as may cover all possible areas. This Court, in the facts of the said case, held that an order of the Single Judge refusing appointment of a receiver and grant of an ad interim injunction was undoubtedly a ‘judgment’ within the meaning of Letters Patent, both because [Order XLIII Rule 1 CPC](#) applies to internal appeals in the High Court and that such

an order even on merits contains the quality of finality and would therefore be a 'judgment' within the meaning of Clause 15 of the Letters Patent."

- 30.** It is evident from the said judgment that certain features of an order have been stressed upon by the Hon'ble Supreme Court for such order to qualify as a judgment to be subjected to an intra-court Letters Patent appeal.
- 31.** Only one of such features is that the order must have the trappings of finality. However, there are other situations also which have been contemplated in the said judgment. For example, the Hon'ble Supreme Court held that where an order vitally affects the valuable rights of the parties, it will undoubtedly be treated as a 'judgment' within the meaning of Letters Patent so as to be appealable to a larger Bench. It was observed in the said case that an order of the learned Single Judge refusing appointment of a receiver and grant of an ad interim injunction was undoubtedly a 'judgment' in the context.
- 32.** From the said report, it is also evident that even if an order is not appealable under Order XLIII Rule 1 of the Code of Civil Procedure, still it may qualify as a 'judgment' within the meaning of Clause 15 of the Letters Patent.
- 33.** With utmost humility, we agree with such proposition, since the legal regime under which a Letters Patent appeal is governed is somewhat different from an appeal under Order XLIII Rule 1 of the Code of Civil Procedure, despite there being certain areas of overlap between the two.
- 34.** Insofar as the present appeal is concerned, the appellant categorically takes the defence of res judicata as well as comity of courts.

- 35.** It cannot be gainsaid that if a party is barred by the principle of res judicata from seeking any relief or the Court is precluded by operation of the doctrine of comity of courts to grant similar relief as adjudicated upon earlier, valuable rights accrue in favour of the beneficiary of such principle.
- 36.** In the event the said doctrine/principle is brushed aside, the rights already accrued in favour of the present plaintiff/appellant, if such issue is ultimately held in favour of the appellant, shall be directly and adversely affected.
- 37.** Secondly, the appellant also raises the issue that the defendant/respondent, having failed to bring cogent evidence in support of its case before the learned Commissioner, cannot now take resort to the grace of a suo motu order of the Court by having a visual inspection by the Commissioner which was refused initially at their behest. Hence, if it can be prima facie established before this Court that the defendant/respondent did not adduce sufficient evidence, which would render the Commissioner's visual inspection, if granted, a roving enquiry for fishing out of evidence, it would be a second area where valuable rights of the plaintiff/appellant would be directly and adversely affected.
- 38.** Thus, this Court is of the opinion that the impugned order partakes the characteristic of a 'judgment' within the contemplation of Clause 15 of the Letters Patent since, if allowed to stand, it might adversely affect the valuable accrued rights of the plaintiff/appellant.
- 39.** Coming to the merits of the case, we find that the Division Bench, in its judgment dated December 20, 2019, which is the genesis of the present dispute, did not categorically lay down the modalities to be adopted by the

Commissioner but merely directed a commission to be held for ascertaining the monies payable by the appellant from June 2012 onwards, whether on account of occupation charges or mesne profits, and also to assess the amount that the appellant therein was liable to pay on account of municipal rates and taxes from 1998 till the date of the Commissioner filing the report.

- 40.** However, such modalities came up for consideration before the Commissioner when the defendant/respondent specifically asked for a visual inspection of the Commissioner by a visit to the subject property.
- 41.** The Commissioner, however, categorically turned down such request of the defendant.
- 42.** Not stopping there, the defendant/respondent took out an application with a similar prayer before the suit court itself. A copy of the said application is handed over to us for perusal, from which it transpires that one of the grounds for making such application, amongst others, was for the Commissioner to ascertain the condition of the suit premises.
- 43.** Such application was decided in the negative, the learned suit court coming to the specific conclusion that since the defendant/respondent failed to adduce sufficient evidence before the Commissioner in that regard, it would tantamount to fishing out of evidence which could otherwise be led by the parties, as well as that the suit court was not sitting in appeal over the Commissioner's report. The concept of fishing out of evidence has also been elaborated in the Institution of Engineers (India) (Supra), where the co-ordinate Bench categorically held that an inventory commission cannot be issued for the purpose of fishing out evidence which may be adduced by either of the parties in the suit.

- 44.** Hence, once such prayer is categorically refused, that too on the self-same ground, the same court, at the same stage of the suit (since the adjudication on the Commissioner's report is still pending), could not have reopened the issue merely for the asking. In fact, it was not 'for the asking' as well, since the defendant/respondent did not seek such relief from the suit Court suo moto issued the direction to the Commissioner to visit the suit premises.
- 45.** A question which arises now is whether the suit Court, within the contemplation of Order XXVI Rule 9 of the Code of Civil Procedure, could by itself had issued such direction at any stage of the proceeding.
- 46.** Under ordinary circumstances, we must say that the Court could. However, the circumstances here are not 'ordinary' in the sense that the doctrine of comity of courts as well as the principle of res judicata squarely operated to preclude the suit Court from passing such a direction.
- 47.** Order XXVI Rule 9 of the Code is not premised on an island isolated from the rest of the principles embedded in civil jurisprudence. It is definitely circumscribed as well as fettered by the principle of res judicata, which squarely operates in the present case.
- 48.** The learned Single Judge, in the impugned judgment, distinguished the earlier order of the suit Court itself on the ground that the same was rendered in a "different context", apparently seeking to project the distinguishing feature to be assessment of the condition of the building. However, as discussed earlier, the ascertainment of the condition of the building was also one of the grounds in the application which had been rejected earlier by the suit Court itself. Hence, such distinction, with due respect to the learned Single Judge, was artificial.

- 49.** That apart, we undoubtedly also agree with the view of the learned Single Judge taken on the earlier occasion since it was for the parties to adduce evidence in support of their respective cases before the learned Commissioner on the germane issues. Having not done so, none of the parties can take advantage of a visual inspection by the Commissioner, which would indeed tantamount to fishing out of evidence by a roving enquiry to fill up the lacunae in evidence which could otherwise be adduced.
- 50.** Another aspect of the matter is required to be considered.
- 51.** Learned senior counsel for the respondent has argued that none of the parties had proved the valuer's report which had been presented by them before the Commissioner.
- 52.** Even without commenting on the merits of the Commissioner's report at this premature stage, it is prima facie noted that the trappings and procedure applicable to a regular suit before a competent civil court are not applicable to the proceedings before a learned Commissioner. Although a Court-appointed Commissioner notionally acts as the limbs and eyes of the court, the proceeding before him/her is not attended by the provisions which govern the proceedings in a regular suit or a judicial forum. Thus, it was prima facie not mandatory for either of the parties to have the valuer's reports presented by them before the learned Commissioner proved by the authors thereof. We say so because such omission, by itself, cannot justify the argument that there was insufficient evidence before the Commissioner for the Commissioner to go to the premises to check for himself.

- 53.** Be that as it may, we do not intend to dwell on the merits of the Commissioner's report at all, but leave it for future adjudication by the suit Court, where it is now sub judice.
- 54.** Even otherwise, a visual inspection by an Advocate Commissioner having no special expertise in the field, in our opinion, could not improve the situation, since an Advocate is not an expert and might not have the acumen to assess the age, exact stage of dilapidation and the valuation of a building without taking resort to a valuer's report. Possession of the parties cannot also be conclusively determined by visual inspection but has to be established by other cogent evidence.
- 55.** Even otherwise, since the matter has been pending indefinitely before the suit Court at the stage of adjudication on the Commissioner's report, which stage has attained near finality in view of an exception having already been filed by the defendant/respondent thereto, we are of the opinion that the matter need not be protracted further at this stage by redirecting the Commissioner to file a fresh report, without adjudicating first on the fate of the earlier report which is already on record. Indeed, in the event the said report is accepted, there would be no scope of any further report. Even otherwise, if the Commissioner's report were to be rejected, it would be open to the suit Court to pass appropriate further orders.
- 56.** However, at this stage, the chapter being closed, could not have been reopened by the learned Single Judge by directing the Commissioner to visit the suit premises and file a report, thereby opening a Pandora's box afresh.

- 57.** In such view of the matter, we are of the opinion that the learned Single Judge erred in law in passing the impugned judgment even in the teeth of the earlier contrary order passed by the suit Court, by directing the learned Commissioner to visit the property and file a report regarding the condition of the building pertaining to the area in possession of the defendant.
- 58.** Accordingly, APOT/30/2026 is allowed on contest, thereby setting aside the impugned judgment dated February 10, 2026 passed in CS/45/2013 (IA GA/9/2024) with CS/11/2013.
- 59.** IA GA/1/2026 is also disposed of consequentially.
- 60.** There shall, however, be no order as to costs.
- 61.** We make it clear that this Court has not entered into the merits of the Commissioner's report and it will be open to the suit Court to decide on the same, as expeditiously as the business of the said Court permits, on its own merits.

(SABYASACHI BHATTACHARYYA, J.)

(BISWAROOP CHOWDHURY, J)