

**E.C No. 196 of 2020
CS 451 of 1989
IN THE HIGH COURT AT CALCUTTA
Original Civil Jurisdiction
Original Side
Smt. Srila Dutta
V.
Smt. Kanta Devi Bhutoria & Ors.**

For the Petitioner : Mr. Mr. A.K. Awasthi, Advocate
Mr. Aishwarya Kumar Awasthi,
Advocate

For the Respondent : Mr. Jishnu Chowdhury, Advocate
Mr. Nikunj Berlia, Advocate
Mr. Aritra Basu, Advocate
Mr. Anshu Jain, Advocate

Hearing concluded on : March 11, 2021

Judgment on : March 16, 2021

DEBANGSU BASAK, J. :-

1. In the execution petition, two issues arose for consideration. One issue was with regard to the actual delivery of possession of the suit premises to the decree holder in terms of the decree as modified. The other issue was the fixation of the date of possession. These two issues were framed and noted in the order dated February 11, 2021.

2. By the order dated February 11, 2021, after recording the contentions of the parties to the execution petition, on both the issues,

so far as delivery of the possession of the suit premises was concerned, orders in terms of prayers (b) and (c) of the Column 10 of the statement of the execution petition were granted.

3. Learned Advocate appearing for the decree holder submitted that, the decree holder obtained possession of two garages, covered space on the ground floor and the open space on the ground floor on February 20, 2021. However, the date of possession can be construed to be on February 11, 2021 being the date of the order for making over possession.

4. Since, the rival contentions were recorded in the order dated February 11, 2021, and the parties did not advance any new contentions the same are not reproduced herein.

5. The issue as to the fixation of the date of possession remained outstanding and the same is required to be decided now.

6. A decree for eviction was passed on October 16, 2015 which was modified on September 6, 2019. In terms of the decree, the decree holder was to obtain possession of the flat on the third floor, a covered area on the ground floor and two garages along with other spaces.

7. The judgment debtor filed an appeal and a stay application in connection with the decree in the suit. An order dated February 3,

2016 was passed recording the undertaking of the decree holder to vacate the suit premises and make over possession thereof to the decree holder without prejudice to the rights and contentions in the appeal. The decree holder admitted of having taken possession of the flat on the third floor on February 3, 2016 subsequent to the decree dated October 16, 2015. Subsequent thereto by a letter dated February 11, 2016 issued by the decree holder to the then Advocate on Record of the judgment debtor the decree holder asked for possession of the balance area. The judgement debtor did not respond thereto.

8. According to the judgment debtor, possession was made over on February 3, 2016. According to the decree holder, only one key for the third floor flat was made over to the decree holder. The judgment debtor did not make over possession of the two garages, covered area and the open spaces being the balance portions under the decree.

9. The decree subsisting between the parties required determination of mesne profit. In the statement of claim filed before the learned Commissioner for ascertaining the mesne profits, the decree holders stated that they were willing to forgo the claim for mesne profits for the garages on and from February 4, 2016 in the event, the judgment debtors confirmed that the possession of the two garages were made over with effect from February 3, 2016, in writing,

and before filing their statement of defence. The judgment debtors did not accept such offer. The judgment debtors did not write any letter to the decree holder confirming that they made over possession of the balance portion of the decreetal area to the decree holders on February 3, 2016. The judgment debtors filed a statement of defence before the learned Commissioner deciding the issue of mesne profits where the judgment debtors took the stand that the garage was not under lock and key and that the decree holders took possession thereof. However, the judgement debtors did not provide any specific date when they made over of possession or any evidence of making over possession, to the decree holders.

10. From the averments of the petition and the affidavit, it appeared that, the judgment debtors did not deny the allegation that one Mr. Pandey of the judgment debtors was holding on to the keys with relation to the garages and that the judgment debtors was not making over possession of the same.

11. The judgment debtors suffered the decree for eviction. The decree is binding on decree holder as well as the judgment debtor. The judgment debtors are also under no less an obligation than the decree holder to ensure that the decree is executed. The decree holders claimed that they were not given possession of the suit premises apart

from the third floor flat, in terms of the decree. The judgment debtors did not state in writing that, they made over possession of every part and portion of the suit premises, in terms of the decree, on February 3, 2012 despite an offer being made by the decree holder in the statement of claim before the learned Commissioner. It is only through Court and in this execution petition that, the decree holder obtained possession of the balance area. In the facts of the present case, it is therefore held that, the decree holder obtained possession of the entirety of the suit premises in terms of the decree dated October 16, 2015 as modified on September 6, 2019 on February 11, 2021.

12. EC 196 of 2020 is therefore disposed of.

[DEBANGSU BASAK, J.]