

*In The High Court At Calcutta  
Civil Revisional Jurisdiction  
(Appellate Side)*

**C.O. 2215 of 2024**  
**Sri Hemanga Chandra De**  
**Vs.**  
**Heramba De & Anr.**

Ms. Sananda Ganguli,  
Mr. Subhradip Roy ... For the petitioner.

Leave is granted to the learned advocate for the petitioner to correct the Ejectment Execution Case number mentioned in the cause title of the revisional application.

The petitioner, being the decree-holder has put the decree of eviction into execution, giving rise to Ejectment Execution Case No. 13 of 2022 before the 2<sup>nd</sup> Court of learned Civil Judge, (Senior Division), at Alipore, District – 24 Parganas (South).

In the said execution case, the opposite party no. 1 has taken out an application under Order XXI Rules 97 and 101 of the Code of Civil Procedure for determination of his alleged independent right, title and interest over the suit property, which has been registered before the executing Court as Misc. Case No. 18 of 2023.

In the said Misc. case, the opposite party no. 1 has tendered his evidence-in-chief as P.W.1, which was objected by the decree-holder on the ground that it is not conforming to the provisions of Order XIX Rule 3 of the Code.

The learned executing Court by the order impugned dated May 15, 2024 has overruled the said objection holding that even if no formal expression is there in the affidavit-in-chief to the effect which part of his evidence is true to his

knowledge and which part of his evidence is true to his belief, that does not invalidate the said affidavit-in-chief.

The said finding of the executing Court certainly offends the provision of Order XIX Rule 3 of the Code but the objection so taken, is pre-matured inasmuch as it is always open to the decree-holder to question the admissibility of the said affidavit-in-chief of the P.W.1 at the time of the final disposal of the said Misc. case, if such an objection is taken, notwithstanding the findings of the order impugned, the Executing Court is obliged to discharge the said objection strictly in terms of the provisions of Order XIX Rule 3 of the Code.

C.O. 2215 of 2024 is thus disposed of with the above observations without any order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

**(Biswajit Basu, J.)**