

Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side

Present : The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
&
The Hon'ble Mr. Justice Uday Kumar

FAT No. 246 of 2025
+
CAN 1 of 2025

Ek Prayaas Educational Society also commonly known as "Ek Prayaas"
-vs-
Abdus Salam Mondal and others

For the appellant : Mr. Deepan Sarkar,,
Ms. Labanyashree Sinha,
Ms. Srijeeta Gupta,
Ms. Sonia Das.

For the respondent
Nos. 2 to 6 : Mr. Sounak Bhattacharya,
Mr. Fazle Haque,
Mr. Anirban Saha Ray,
Mr. Abhirup Halder.

Heard on : June 23, 2025.

Judgment on : June 23, 2025.

Sabyasachi Bhattacharyya, J.:

1. It is pointed out by learned counsel for the appellant that the deficit court-fees of Rs. 1,100/- has been deposited on June

20, 2025, which is also reflected from the relevant entry in the official website of the High Court at Calcutta.

2. Accordingly, the said defect stands cured.
3. The affidavit-of-service filed in Court today be kept on record.
4. The respondent nos. 2 to 6 are represented through counsel.

Insofar as the respondent no. 1 is concerned, although the track report indicates that the address given in the postal articles in respect of respondent no. 1 is endorsed as “insufficient”, the address at which the same was sent was actually the same as that which was furnished in the trial court.

5. Since the respondent no. 1 contested in the court below from the same address, we deem that the respondent no. 1 is deliberately avoiding service and accordingly we treat the application to have been duly served.
6. In view of the very short point is involved, we take up the appeal and the application together for hearing.
7. The present appeal has been preferred against a deemed decree whereby the plaint of the plaintiff/appellant’s suit for declaration and consequential reliefs has been rejected under Order VII Rule 11 of the Code of Civil Procedure (in short “the

Code”) on the ground of the bar under Rule 101 of Order XXI of the Code.

8. The facts, in brief, are that the respondents had filed an eviction suit against one Mr. Cook, who purportedly was a tenant in respect of the suit premises. Subsequently, an *ex parte* decree was obtained in the said suit, which was put into execution.
9. The present appellant, a stranger to the said suit, filed an application claiming its independent rights under Order XXI Rules 97 to 101 of the Code. The said application was registered as Miscellaneous Case No. 48 of 2018. In the said Miscellaneous Case, the appellant pleaded that the tenancy of Mr. Cook was subsequently terminated and a fresh tenancy was created in favour of one Ms. Nilam Ahmed. Thereafter, according to the case of the appellant, the tenancy of Nilam Ahmed was also surrendered in favour of the landlords and a fresh tenancy was created in favour of the appellant.
10. However, vide order No. 39 dated April 21, 2022, the executing court dismissed Miscellaneous Case No. 48 of 2018 on the cryptic ground that since the prayer as sought by the

appellant was outside the purview of the jurisdiction of the said court, the miscellaneous case could not be entertained.

11. The present appellant, however, instead of challenging the said palpably erroneous order, instituted a fresh suit, in consonance with the observations in the aforesaid order.
12. The said suit is the present suit, which ultimately culminated in rejection of its plaint under Order VII Rule 11 of the Code, ironically on the ground that it was barred under Order XXI Rule 101 of the Code.
13. The other ground taken in the application under Order VII Rule 11 of the Code as to the suit being barred by the provisions of the Waqf Act was not entertained by the trial court.
14. Upon hearing learned counsel for the parties, we completely empathize with the plight of the appellant, who was caught between the Devil and the Deep Blue Sea, it being observed by the executing court that an application under Order XXI Rule 101 of the Code was not maintainable while the other court, that is, the present trial Court, rejected its plaint on a diametrically contrary view.

15. It has been argued by the respondents that the appellant cannot take the advantage of the erroneous order of the executing court and ought to have preferred an appeal against the same. We completely agree with the proposition but yet, we find an ingredient of *bona fide* doubt in the mind of the appellant as to whether to prefer an appeal against the order of the executing court rejecting its earlier application under Order XXI Rule 101 of the Code or to institute a suit on the self-same cause of action.
16. Since there was an order of a competent civil court (the executing court), erroneous or otherwise, staring at the face of the appellant, we cannot put much blame on the appellant for having mistakenly preferred a suit instead of an appeal against the said order.
17. However, despite such ingredient of *bona fides*, we are unable to accept the contention of the appellant that the present suit is maintainable, since it is undoubtedly barred by Rule 101 of Order XXI of the Code.
18. The language of Rule 101 is unambiguous. It provides that *all* questions (including questions of right, title and interest in the property) arising between the parties to a proceeding on an

application under Rules 97 or 99 of Order XXI or their representatives and relevant to the adjudication of the application, shall be determined by the court dealing with the application *and not by a separate suit*.

19. Hence, FAT 246 of 2025 is dismissed on contest, thereby affirming the impugned judgment and deemed decree dated May 8, 2025 passed by the learned Judge, Fifth Bench, City Civil Court at Calcutta, in Title Suit No. 1575 of 2024.
20. Consequentially, CAN 1 of 2025 is also dismissed.
21. There will be no order as to costs.
22. A formal decree be drawn up accordingly.
23. It is made clear that nothing in this order shall preclude the appellant from preferring a properly constituted challenge against Order No. 39 dated April 21, 2022 passed in Miscellaneous Case No. 48 of 2018, subject to the provisions of the Limitation Act, including Section 14 thereof.

I agree.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)