

02.09.2025.
06
Ct.No.7.
as

C.O.3240 of 2025

**Deb Narayan Basu
Vs.
Sankari Sett & Ors.**

Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee.
...for the Petitioner.

Mr. Bikram Banerjee,
Ms. Mou Halder,
Ms. Kuheli Gayen,
Ms. Shinjini Chakraborty,
Ms. Adrita Dey,
Mr. Sagar Dey.
...for the Opposite Party.

1. In the present case, the landlord, who inducted a tenant, namely, Mahitosh Bose way back in 1952, instituted a suit for eviction vide. Title Suit No. 892 of 1969 in 1969. In his effort to evict the tenant, he obtained a decree in his favour in 1981 and the judgment and decree passed in Title Suit no. 892 of 1969 was challenged in an appeal, F. A. no. 142 of 1982; however, the appeal was dismissed by a Hon'ble Division Bench of this Court.

2. Thereafter, the landlord/ decree-holder put the decree in execution in 1987. The execution application was registered as Ejectment Execution Case No. 293 of 1987.

3. Suddenly, in 1989, one Sudhir Kumar Bose, claiming himself to be the cousin of the original tenant, instituted a suit vide Title Suit No. 442 of 1989, seeking a declaration that the judgment and decree passed in the ejectment suit on 19.12.1981 is not binding upon him, as he was a pre-Act sub-tenant under Mahitosh Bose. Additionally, he prayed

for a decree of permanent injunction restraining the landlord/decreed holder from executing the decree passed in Title Suit No. 892 of 1969. In the schedule appended to the plaint of Title Suit No. 442 of 1989, only one room on the first floor with an attached verandah at the premises No. 72/1, Manicktala Street, P.S. Amherst Street, Calcutta-9, was mentioned as suit premises.

4. I am informed that the application under Section 47 of the Code of Civil Procedure, 1908 (hereinafter referred to as “the Code”) were filed by the petitioners before the Executing Court; however, the same has been rejected.

5. Meanwhile, after learning about the ex-parte decree passed in Title Suit No. 442 of 1989, the successor-in-interest of the original landlord filed an application under Order IX Rule 13 of the Code for setting aside the ex-parte decree, along with an application for condonation of delay. The Court found that there was no sufficient cause preventing the legal heirs of the landlord from preferring the application for setting aside the ex-parte decree within the prescribed period of limitation. Consequently, the application for condonation of delay was rejected, and the Miscellaneous Case was not admitted.

6. Aggrieved by the order rejecting the application for condonation of delay and, consequently, the refusal to admit the Miscellaneous Case, an appeal was preferred before this Hon’ble Court. However, the said appeal was dismissed.

7. Subsequently, before the Executing Court, the present petitioners who are the son and daughter of Sudhir Kumar

Bose, the cousin of the original tenant filed an application under Order 21 Rule 99 of the Code to resist their dispossession from the suit premises in execution of the decree passed in Title Suit no. 892 of 1969. The application, which was subsequently registered as Misc. Case No. 113 of 2023, was rejected.

8. Challenging the order of rejection of Misc. Case No. 113 of 2023, an appeal under Order 21 Rule 103 of the Code was preferred before the Court of the learned Chief Judge, City Civil Court. By an order dated 25th November 2024, the learned Court below modified the original decree and directed that the decree be executed excluding one room on the first floor with an attached verandah at the suit premises, taking note of the schedule in the decree passed in Title Suit No. 442 of 1989. The order dated 25th August 2025 is under challenge in this revisional application.

9. Mr. Roy, learned Advocate representing the petitioner, submits that the learned Court below has decided to allow partial eviction; however, committed an error in excluding the verandah from the order.

10. Mr. Banerjee, learned Advocate representing the opposite party, submits that the present petitioner has no right to resist the execution of the decree. He contends that the petitioner is merely a third party and has failed to establish any independent right to resist or obstruct the execution. He further submits that Sudhir Kumar, who is not a legal heir of the original tenant, filed a suit by suppressing material facts and obtained an ex-parte decree, and the present petitioner cannot derive any benefit from

that decree and learned appellate Court has glossed over these issues.

11. He also points out that every attempt made by the petitioner to resist the execution has failed, and the civil revision applications preferred by him have been rejected by various Courts with costs. He strongly asserts that the petitioner has no right, title, or interest in the suit property and, therefore, no legal standing to resist the execution of the decree.

12. Heard the learned Advocates appearing for the respective parties and perused the materials on record.

13. It has almost become a recurring phenomenon, particularly in eviction suits, that once a decree for eviction is passed against a tenant, the associates, relatives, or other interested persons come forward in aid of the judgment-debtor and attempt to set up an independent right with a view to obstruct the execution process. It is for this reason that some legal commentators observe that the real battle in civil litigation often commences only after the decree is passed and the decree is put to execution.

14. As noted earlier, in the present case, the tenant was inducted in 1952, and the suit for eviction was instituted in 1969, which ultimately decreed in 1981. The said decree was put to execution in 1987. The judgment and decree in the eviction suit were affirmed by a Hon'ble Division Bench of this Court. Both the original tenant and the landlord have since passed away. At this stage, the son of the cousin of the original tenant has sought to resist the execution of the decree. From 1969 to 2025, a span of more than 56 years

has elapsed. The landlord's pursuit, which commenced in 1969 for obtaining a decree for eviction and subsequently for executing the decree, still remains unfulfilled even after more than five decades.

15. Under Section 13 (1) of the West Bengal Premises Tenancy Act, 1956 (for short, the 1956 Act), the legislature has used the word "*sub-lets*", whereas in Section 6 (a) of the West Bengal Premises Tenancy Act, 1997 (for short, the 1997 Act), the legislature has employed the words "*has sub-let*". This has given rise to a perception that pre-1997 Act sub-tenant cannot be evicted by invoking Section 6(a) of the 1997 Act. There is a belief that if someone claims to be a sub-tenant under the earlier Act, they cannot be evicted under the 1997 Act unless he is not made a party in the original suit instituted against the tenant.

16. Under the Old Act of 1956, if a sub-tenant failed to give notice under Section 16(1) of 1956 Act, he is not entitled to be impleaded as a party in a suit filed against the original tenant. Similarly, under the 1997 Act, if a sub-tenant does not serve a notice under Section 26(2) and is not elevated to the status of a direct tenant under Section 26(3), they cannot claim a right to be added as a party in an eviction suit instituted against the original tenant.

17. In response to my query, Mr. Roy has categorically submitted that Sudhir Kumar Bose could not produce any such notice before any Court of Law. The scope of enquiry under Order 21 Rules 97, 99 and 101 of the Code of Civil Procedure, 1908 (for short, the Code) is whether the person concerned, who has been resisting the execution of the

decree, is bound by the decree or has been able to establish an independent right. The proceeding initiated under Order 21 Rule 97, 98, 99 and 101 of the Code and the enquiry made under Rule 101 is in the nature of a suit. In such a proceeding, the question regarding right, title and interest is determined, and any separate suit by the person is barred by Section 47 of the Code. Therefore, while dealing with an application preferred under Order 21 Rule 97 or under Order 21 Rule 99 of the Code, the Court has the power to determine the question relating to right, title and interest of the person who has come forward to resist the execution proceeding. If a person, who is entitled to resist the execution of the decree, fails to set up or establish an independent right and instead claims any right through the original tenant, then he shall be bound by the decree. It goes without saying that in an appeal preferred under Order 21 Rule 103 of the Code, the Appellate Court cannot modify the original decree, because an appeal under Order 21 Rule 103 does not confer any right to alter or modify the original decree passed by the learned Trial Court. However, in the present case, the order impugned indicates that the decree has been modified. Furthermore, the learned Court below has not discussed why the order dated 23rd December 2024 passed in Misc. Case No. 113 of 2023 cannot be allowed to stand.

18. In view thereof, the order dated 23rd December, 2024 is set aside and the revisional application is allowed. The Misc. Appeal No. 5 of 2025 is dismissed. The order dated 23.12.2024 passed in Misc. Case no. 113 of 2023 is affirmed.

19. Accordingly, the revisional application is disposed of, however, without any order as to costs.

(Partha Sarathi Chatterjee, J.)