

19.8. 2025
item No.38
n.b.
ct. no. 24

C.O. 4298 of 2024

**M/s. Vishwamitra Ramkumar
Vs.
Golam Sarwar & Anr.**

Mr. Lutful Haque,
Ms. Taharima Khatun
..... for the petitioner.

Mr. Ayan Banerjee,
Ms. Debaree Dhamali,
Ms. Riya Ghosh,
..... for the State respondent.

This is second ground of litigation initiated by the petitioner before this Court.

To understand that the issue involved herein, the brief fact is required to be narrated.

Petitioner being the landlord filed a suit for eviction under Section 13(1)(f) of the West Bengal Premises Tenancy Act, 1956. The said proceeding went up the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has decreed the suit directing the Trial Court to pass the formal decree, so, that the landlord be given Khas possession for building and re-building, thereafter, after completion of building the tenant may put in possession in terms of the Section 18A of the said Act, 1956.

Consequently, the Trial Court passed a decree favouring both the landlord and tenant and fixed the date for vacation of the building by the tenants and completion of building by the landlord and again

directed the landlord to give possession to the tenants within the stipulated period of time. Consequently, the tenants vacated the premises. The landlord started building and re-building. However, during the time fixed in the decree, the landlord could not give possession to the tenants. Thus, tenants approached the Trial Court by filing specific application. Petitioner herein challenged the proceeding initiated by the learned Trial Court at the behest of the tenants only on the ground that learned Trial Court has no jurisdiction under Section 18A of the said Act, 1956 to put the tenant in possession.

It is the submission of the landlord that the rent controller has the only authority to put the tenant in possession, who has been evicted from such premises by a decree passed by the Court under Section 13(1)(f) of the said Act. On the prayer of the petitioner a Co-ordinate Bench of this Court in C.O. 101 of 2021 vide its judgment dated January 9, 2023 has disposed of the said Civil revision with the observation as mentioned in paragraphs 10, 12,13 and 14. They are set out hereinunder.

“10. It appears that inspite of such specific observations made by the Apex Court, the petitioner herein has failed to assign any cogent reason as to why the suit premises could not be completed till now for giving back possession to tenant and under what circumstances possession of the suit premises could not be handed over to the tenant within stipulated period mentioned in the decree when admittedly he obtained possession of the suit premises for the building and rebuilding purpose from the defendant/opposite party

herein on 26th April 2016 and admittedly from other tenants on 30th August 2017.

11. On perusal of the judgment passed in Title Suit No. 480 of 1988 it appears that the court below has given direction to both the parties. The plaintiff was directed to obtain sanction plan and to produce the same before the court and to serve copy to the tenants preferably within three months from the date of the order and defendant was directed to vacate suit premises within one month from the date of receipt of production of the sanctioned plan by the plaintiff and on the later part of the order the plaintiff was directed to put back possession of the tenant in the reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff. Accordingly in the same judgment and decree, the direction was made to both the plaintiff and to the defendant for compliance of their respective obligation and liabilities. In the last part of the order it was further mentioned in case of any neglect or failure of delivery of possession of the shop room either by the tenant/defendant or by the land lord/plaintiff within the stipulated period as mentioned in the body of the judgment, possession will be delivered by putting the decree into execution on an application of either of the parties. Accordingly the petitioner herein filed the aforesaid execution case and obtained possession. Now the defendant /opposite party is very much justified in making the prayer that in spite of getting delivery of possession on 26th April 2016, the petitioner herein has neither completed the work of building/rebuilding of the portion of premises in question for putting back possession to the tenant /opposite party, nor has delivered possession in compliance with the order of the city civil court which directs that the plaintiff/ land lord, shall put back possession to the tenant /opposite party to the reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff. Plea taken by the petitioner herein that the defendant/opposite party had not delivered the possession within one month from the date of receipt of the production of the sanction plan as ordered by the court and that the petitioner herein got possession of the premises in question by executing the decree through police help, cannot be the ground for the petitioner to flout the order passed by the city civil court to comply his part of obligation within the stipulated period. However, it appears to me that as per the spirit of the said judgment, when the plaintiff/petitioner has failed to put back the possession of the premises in question to the tenant/opposite party herein, within one year from the date of delivery of possession by the tenant /opposite party to the plaintiff petitioner, the tenant /opposite party could have filed separate execution case for executing the decree to get back possession of suit premises from

landlord/petitioner in terms of the decree passed in Ejectment suit no 480 of 1988.

12. In this context it is to be made clear that though the petitioner has taken a plea of maintainability of filing such application before court below stating that under section 18A, such execution proceeding lies before controller after completion of building/rebuilding work and execution proceeding before court below is not maintainable, but in my considered opinion, such plea is dubious in nature since petitioner himself alleged that the application before court below is premature. Judgment of the Apex Court was passed as per the provision of Section 13(1) (f) of the Act of 1956 and the trial court was directed to pass decree and consequential orders in terms of section 18A of the Act. The petitioner herein even obtained possession from tenant/opposite party by executing decree before trial court, now he cannot take the plea that defendant /tenant cannot get back possession by executing the same decree from the court below. He must not be allowed to blow hot and cold at the same time. Moreover executing court rightly observed that it is not an independent application under section 18A of the Act of 1956 for restoration of possession after decree and reconstruction which is required to be filed before concerned rent controller but the decree has been passed by court below in terms of judgment and directions passed by the Apex Court and as such execution proceeding is very much maintainable before the court below.

13. In view of above order impugned dated 11.02.2020 and 05.03.2020 passed in Execution Case No. 85 of 2008 are hereby set aside.

14. In view of above, C.O. 101 of 2021 is disposed of giving liberty to the opposite party /tenant to file separate execution proceeding before the court below to execute the decree passed in Title Suit No. 480 of 1988 within a period of two months from the communication of the order and in the event of filing such application for execution of the decree by the tenant/opposite party, the court below shall dispose of such execution proceeding within a period of six months of filing such execution proceeding, without giving any unnecessary adjournment to either of the parties.” By passing such order, the Co-

ordinate Bench has given liberty to the tenants to file separate execution proceeding to execute the decree passed by the learned Trial Court; the tenant has initiated the execution case. Now, the present petitioner has challenged the execution case filed by the tenants on two grounds; **firstly**, the order passed by the Coordinate Bench in C.O. 101 of 2021 *de hors* to the direction of the Hon'ble Supreme Court in civil appeal no.1824 of 2007. **Secondly**, the law declared by the Hon'ble Supreme Court is binding upon all Courts under Article 141 of the Constitution of India.

In deciding the issue involved herein, it appears that while passing the order, the Hon'ble Supreme Court has decreed the suit for eviction under Section 13(1(f) of the Act. By passing the said order, the Hon'ble Supreme Court has also directed the Trial Court to pass a decree expeditiously and also pass consequential orders in terms of Section 18A when move in the act on behalf of the landlord.

It is the contention of the learned Counsel for the petitioner that the learned Trial Court has acted flouting direction of the Hon'ble Supreme Court and *de hors* to the provision of Section 18A of the said Act, 1956.

For better appreciation of the fact, Section 18A required to be quoted below:-

18A. Restoration of tenancy where decree for recover of possession is passed under clause(f) of sub-section(1) of Section 13. (1) Where ground mentioned in clause(f) of sub-section (1) of section 13, it shall specify the period within

which the building or rebuilding, or the additions or alterations, on or to such premises shall be completed and may on the application of the landlord extend such period from time to time for good and sufficient reasons.

(2) On the completion of the building or re-building or the additions or alterations, on or to such premises the Controller may, on the application of the tenant who has been ejected from such premises made within three months of the date of such completion and after giving the landlord an opportunity of being heard, by order direct the landlord to put such tenant in possession of such premises or such part thereof as the Controller may specify in his order within fourteen days of the date of the order.

(3) If upon an order being made under sub-section(2), the landlord fails or neglect to deliver possession of such premises or such part thereof as is specified in the order to the tenant within the time specified then the Controller shall execute the order and put the tenant in possession of such premises or such part thereof and in that event the tenant shall be liable to pay fair rent in respect of such premises or such part thereof from the date of delivery of such possession."

Having heard learned counsel for the parties and also after perusing the provision of law as well as the decree passed by the Trial Court and directives of the Hon'ble Supreme Court, the instant civil revision has put this Court in a possession wherein a Co-ordinate Bench has already decided the issue in favour of the tenants. It is the sole contention of the petitioner that order passed by the Co-ordinate Bench in C.O. 101 of 2021 is *de hors* to the order passed by the Hon'ble Supreme Court.

To properly justify the argument advanced by the learned counsel for the petitioner, it appears that the learned Co-ordinate Bench has categorically hold that the controller has the authority **after completion of building or rebuilding work**. In terms of directions of the Hon'ble Supreme Court, the Trial Court can pass

decree and consequential orders. This Court is not sitting in appeal upon observation of the Co-ordinate Bench. Moreover, the instant argument on behalf of the petitioner, if I consider the approach of the petitioner to justify the observation of Co-ordinate Bench under the teeth of Article 141 of the constitution of India, it would be tantamount to be an observation or enquiry, which is provided under appeal.

Moreover, on perusal of the order passed by the Co-ordinate Bench it appears to me that Co-ordinate Bench has not passed any order *de hors* to the directives of the Hon'ble Supreme Court as well as provision laid down under Section 18A of the said Act, 1956.

I Make it clear that the Co-ordinate Bench has only directed the opposite party/tenant to file separate execution proceeding before the Court below, which appears to me very prudent and correct in terms of the directives of the Hon'ble Supreme Court.

Under the above observation, I find no justification to entertain the petitioner's plea that the impugned order passed by the Co-ordinate Bench *de hors* to the guideline of the Hon'ble Supreme Court,

Under the same observation, the instant civil revisional application appears to me not maintainable and the same is hereby dismissed.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Subhendu Samanta, J.)