

OD-1 to5, 6,8 to 12

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APOT/164/2025
WITH EC/309/2019
CS/164/1988
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/165/2025
WITH EC/309/2019
CS/164/1988
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/166/2025
WITH EC/309/2019
CS/164/1988
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/167/2025
WITH EC/309/2019
CS/164/1988

SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ANR

APOT/168/2025
WITH EC/309/2019
CS/164/1988
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ANR

APOT/107/2025
WITH EC/309/2019
IA NO:GA/1/2025
MAHESH KUMAR JHUNJHUNWALA AND ORS
-VS-
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
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APOT/119/2025
WITH EC/309/2019
IA NO:GA/1/2025
M/S NATIONAL WIRE WORKS
-VS-
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
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APOT/145/2025
WITH EC/309/2019
IA NO:GA/1/2025
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/146/2025
WITH EC/309/2019
IA NO:GA/1/2025
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/147/2025
WITH EC/309/2019
IA NO:GA/1/2025

SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

APOT/148/2025
WITH EC/309/2019
IA NO:GA/1/2025
SRI SRI ISWAR GAJALAKSHMI MATA THAKURANI AND ORS
-VS-
MARSHALL SONS AND COMPANY INDIA LIMITED AND ORS

BEFORE:
The Hon'ble JUSTICE RAJASEKHAR MANTHA
And
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date: July 7, 2025.

Appearance:

Items 1-5, 9-12:

Mr. J.K. mitra, Sr. Adv.; Mr. A. Mitra, Sr. Adv.; Ms. R. Singh, Adv.; Mr. S. Banerjee, Adv.; Mr. S. Dasgupta, Adv.; Mr. S. Sen, Adv.; Mr. A. Chakraborty, Adv., for appellants.

Items 1-6, 8-12:

Mr. Sushil K. Mishra, Adv.; Mr. Sailendra K. Mishra, Adv.; Mr. S. Laskar, Adv., for Judgment debtor no.2.

Item 1-5, 6, 9-12:

Ms. I. Hasan, Adv., Mr. S. Sarowgi, Adv.; Mr. H. Bhawsingka, Adv., for Marshall Sons.

Item 6:

Mr. D. Ghosh, Sr. Adv.; Mr. S. Dasgupta, Adv.; Ms. S. Mukherjee, Adv.; Mr. B. Mukherjee, Adv., for appellant.

Items 6&8:

Mr. J.K. mitra, Sr. Adv.; Mr. A. Mitra, Sr. Adv.; Ms. R. Singh, Adv.; Mr. S. Banerjee, Adv.; Mr. S. Dasgupta, Adv.; Mr. S. Sen, Adv.; Mr. A. Chakraborty, Adv., for R-1-27.

Items 4, 5, 8, 9:

Mr. J. Saha, Sr. Adv.; Mr. N. Bhattacharjee, Sr. Adv.; Ms. N. Banerjee, Adv.; Mr. B. Jha, Adv.; Mr. N. Chakraborty, Adv.; Mr. S. Sarkar, Adv.; Mr. A.G. Sinha, Adv., Ms. S. Mukherjee, Adv., for respondents.

1. The Court: Affidavits-of-service filed are kept on record.
2. One set of appeals are directed against an order passed by a Single Bench to examine under the provisions of Order 21 Rules 97-103 of the CPC as to whether the decree is executable against the sub-sub-lessees/tenants.
3. It is submitted that hearing has substantially progressed and the matters are fixed now on July 9, 2025.
4. This Court requests the Single Bench to conclude the hearing preferably within a period of one month from the date already fixed subject to its business permitting.
5. Insofar as the appeals against the order dated March 27, 2025 are concerned, this Court is of the view that the costs of Rs.3 lakhs each, imposed on the sub-lessees who claim that the decree is not binding or enforceable against them, have been put to appropriate terms. Such terms are discretionery and given the commercial nature of the litigation and the nature of the property located in a commercial area, this Court is not inclined to deal with the same.
6. Insofar as GA/9/2022 and GA/14/2024 are concerned, filed under order 21, rules 97-100 of the CPC, are concerned, this Court notes that particulars of fraud were given in the applications. But the Single Bench, in its order dated March 27, 2025, does not appear to have addressed the same.

7. However, a casual observation has been made by the Single Bench that no material has been placed to the Court to substantiate that fraud was exercised before the Trial Court for obtaining a collusive decree.
8. This Court is of the view that the observation does not even remotely satisfy a process of adjudication where fraud is alleged in obtaining a decree from a Court of law.
9. To that extent, this Court is not satisfied that GA/9/2022 and GA/14/2024 have been appropriately dealt with by the Single Bench.
10. Mr. Abhrajit Mitra, learned senior counsel appearing for the landlord/decreed holder, would argue and submit that there are several decisions of the Supreme Court that expound on the proposition of fraud. He wanted to place the same before the Court.
11. This Court is of the view that without appropriate adjudication from the first Court, it would be grossly unfair to the parties and inappropriate for the Appellate Court to pronounce any absence or existence of fraud in the backdrop of a casual single sentence observation by the Single Judge.
12. For the reasons indicated above, the impugned judgment dated March 27, 2025, to the extent that it has dismissed GA/9/2022 and GA/14/2024 shall stand set aside. Consequently, the portion directing payment of costs in so far as GA/9/2022 and GA/22/2024 are concerned, shall stand set aside.
13. The matter is remanded back to the Single Bench for consideration afresh of GA/9/2022 and GA/14/2024 as well as other pending matters already fixed.
14. GA/9/2022 and GA/14/2024 which are restored to the file of the Single Bench, shall be heard out afresh and due reasoning is provided in a fresh order.

15. It is made clear that this Court has not entered into or pronounce upon the rival contentions of the parties with regard to the decree or the applications pending before the Single Bench. The Single Bench shall proceed to decide the matter independently.

16. With the aforesaid observations, all the appeals along with the connected applications stand disposed of.

(RAJASEKHAR MANTHA, J.)

(AJAY KUMAR GUPTA, J.)

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