

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Before:

**The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Om Narayan Rai**

**APOT 219 of 2024
With
CS 992 of 1986
IA No: GA 1 of 2024
Jaspal Singh Chandhok
Vs.
Sri Gobin Chand Seal**

For the Appellant	: Mr. Swatarup Banerjee, Adv. Ms. Somali Mukhopadhyay, Adv.
For the Respondent	: Mr. Anirban Kar, Adv. Mr. Parimal Bhattacharya, Adv. Mr. Munshi Ashiq Elahi, Adv. Mr. Sahidullah Mridha, Adv. Ms. Vedatri Bhattacharya, Adv. Ms. Snigdha Das, Adv. Mr. Rohit Mahato, Adv. Ms. Khushnuma Akhter Ansari, Adv.
Hearing Concluded on	: 30.07.2025
Judgment on	: 11.09.2025

Om Narayan Rai, J.:-

1. The instant appeal takes exception to a judgment and order dated May 03, 2024 passed in Execution Case No. 364 of 2021 whereby the aforesaid

Execution Case has been dismissed upon holding the same to be not maintainable.

FACTS:

2. Bereft of minute details, the essential facts leading to the present appeal are as follows:-

- a) The respondent (i.e. the defendant in the suit) was a tenant under the appellant (i.e. the plaintiff in the suit) in respect of a shop room bearing no. 1A admeasuring about 1014 sq.ft. together with a porch at premises no. 30, Ganesh Chandra Avenue, Police Station- Bowbazar, Kolkata-700013.
- b) The appellant herein instituted a suit being C.S. No. 922 of 1986 for eviction of the respondent from the said premises i.e. the said shop room bearing no. 1A.
- c) The said suit was ultimately decreed on compromise on June 23, 2014. In terms of the settlement arrived at between the appellant and the respondent as aforesaid, the aforesaid shop room was surrendered by the respondent to the appellant and the respondent took possession of the shop room no. 1A/1 admeasuring about 507 sq.ft. (being the fifty percent of the shop room no. 1A) together with a wooden mezzanine floor at the ground floor at premises no. 30, Ganesh Chandra Avenue, Police Station - Bowbazar, Kolkata-700013.
- d) In terms of the said compromise, the respondent-tenant was entitled to remain in occupation of the said shop room being shop room no. 1A/1 for a period of ten years and the appellant-landlord was precluded from terminating the tenancy prior to the expiry of the said period of ten

years unless the terms and conditions stipulated in the settlement as also the grounds provided in the West Bengal Premises Tenancy Act, 1997 were violated by the respondent-tenant.

- e) Alleging that the respondent had defaulted in payment of the rent in terms of the compromise decree the appellant put the decree dated June 23, 2014 into execution by filing an execution case being E.C. No. 364 of 2021 before expiry of the said period of ten years.
- f) The said execution case was contested by the respondent *inter alia* on the ground that since the respondent had been inducted in shop room no. 1A/1 afresh upon the respondent surrendering his earlier tenancy in respect of shop room no. 1A, therefore, the same gave rise to a fresh cause of action and the respondent could not be evicted by the appellant without instituting a fresh suit for eviction.
- g) The respondent's contention weighed with the Hon'ble Single Judge and the Hon'ble Single Judge was pleased to dismiss the execution case being E.C. No. 364 of 2021 by a judgment and order dated May 03, 2024.
- h) Being aggrieved by the said judgment and order dated May 03, 2024 the appellant has approached this Court by filing the present appeal.

ARGUMENTS ON BEHALF OF THE APPELLANT:-

- 3. Mr. Banerjee, learned Advocate appearing for the appellant submitted that the Hon'ble Single Judge has failed to appreciate that the tenancy which formed the subject matter of the suit was in respect of the shop room no.1A (measuring 1014 sq.ft.) and that merely because in terms of the compromise, the respondent vacated a portion thereof (measuring 507 sq.ft.)

and the respondent was permitted to remain in occupation of the other portion thereof (measuring 507 sq.ft.), which was numbered as shop room no.1A/1, such permission to occupy shop room no.1A/1 could not be considered to be a case of fresh induction or a fresh tenancy.

4. It was submitted that as the respondent had defaulted in payment of rent in terms of the compromise decree therefore the appellant was very well entitled to put the decree into execution.
5. Mr. Banerjee further submitted that the respondent had used an affidavit-in-opposition against the appellant's application for execution and in the said affidavit-in-opposition, no case had been made out that the respondent had been inducted as a fresh tenant or that a fresh tenancy or a new tenancy had been created by signing the terms of the settlement on the basis whereof the suit for eviction had been decreed. It was then submitted that the decree dated June 23, 2014, had been passed on compromise and since the same had neither been challenged by the respondent before any Court of law nor had the same been declared to be a nullity by any Court prior to execution being levied, the said decree is binding on the parties.
6. Mr. Banerjee relied on a judgment of the Hon'ble Supreme Court in the case of ***Nagindas Ramdas vs. Dalpatram Ichharam alias Brijram & Ors.***¹ for the proposition that if no objection as to the executability of the decree has been taken, on the ground of the same being a nullity, the Executing Court cannot go behind the decree.

¹ (1974) 1 SCC 242

7. Another judgment of the Hon'ble Supreme Court in the case of ***Mumtaz Yarud Dowla Wakf vs. Badam Balakrishna Hotel Pvt. Ltd. & Ors.***² was relied on for the proposition that the onus lies heavily on the judgment-debtor to satisfy the Court that a decree is not executable and that when the exercise is likely to involve a factual adjudication it should be avoided by the Executing Court. The said judgment was also relied on for the proposition that no one should be allowed to approbate and then reprobate and that a person who had taken the benefit of an instrument could not be allowed to question the same.
8. Mr. Banerjee also placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***Kalloo (Smt) & Ors. vs. Dhakadevi & Ors.***³ for the proposition that the intention of the parties to the compromise must be looked into by the Executing Court. It was sought to be contended that the parties did not intend to create a fresh tenancy and that the intention was actually to postpone the execution of the decree for another period of ten years.

ARGUMENTS ON BEHALF OF THE RESPONDENT:-

9. Mr. Kar, learned Advocate appearing for the respondent submitted that the Hon'ble Single Judge has rightly passed the order impugned. He took us through the judgment and order impugned and submitted that when it had been expressly recorded in the decree that in terms of the settlement arrived at between the parties, the respondent was surrendering the earlier tenancy in respect of shop room no. 1A and was being freshly inducted as a tenant

² 2023 SCC OnLine SC 1378

³ (1982) 1 SCC 633

in respect of shop room no. 1A/1, the respondent's induction in the said shop room no. 1A/1 must be deemed to be a case of fresh tenancy.

10. It was then submitted that the decree passed by the Hon'ble First Court stood satisfied upon the induction of the respondent in shop room no.1A/1 as per the terms of settlement and that the said tenancy so created was to be governed by the provisions of the West Bengal Premises Tenancy Act, 1997. He invited our attention to paragraph 11 of the Affidavit affirmed and used by the appellant in support of the Tabular Statement filed by him seeking execution of the compromise decree and submitted that the statement made by the appellant in the said affidavit to the effect that the respondent had "*not complied strictly with the provisions of West Bengal Premises Tenancy Act, 1997*" made it clear that the appellant too believed that a new/fresh tenancy had ensued under the West Bengal Premises Tenancy Act, 1997.

11. It was further submitted that if it can be established before the Executing Court that the decree, execution whereof has been sought for, contains terms which are contrary to law the same would not be executed.

12. It was also submitted that as the rent payable by the respondent is Rs. 2000/-(Rupees Two Thousand) per month therefore even in that view of the matter, the tenancy squarely fell within the purview of the West Bengal Premises Tenancy Act, 1997.

13. Referring to clause 9 of the terms of the compromise agreement (which records that in default of handing over peaceful and vacant possession of the premises the plaintiff and/or his successor-in-interest would be entitled to seek recovery of vacant possession of the shop room by merely executing

the decree without filing a fresh suit for eviction), it was submitted that such term was clearly unlawful inasmuch the same fell foul of the provisions of Section 12A of the West Bengal Premises Tenancy Act, 1997.

- 14.** Mr. Kar contended that the settlement term which provided for eviction of the respondent by dint of mere execution of a decree without filing a fresh suit was in contravention of the law of the land inasmuch as in terms of Section 12A of the West Bengal premises Tenancy Act, 1997 only the Court as defined in Schedule IV of the said Act of 1997 has the jurisdiction to entertain a suit or proceeding for recovery of possession.
- 15.** It was next submitted that the terms of settlement evinced that the parties intended to create a fresh tenancy and that being so the respondent could not be evicted without instituting a fresh suit. Mr. Kar submitted that since the said term of the decree was one in contravention of the statutory provision as aforesaid and the same was hit by the provisions of section 28 of the Indian Contract Act, 1872 therefore, the same was a nullity and the Executing Court rightly dismissed the execution case.
- 16.** As regards the appellant's contention in respect of non-payment of rent and subletting, it was submitted that actually there was no default whatsoever in payment of rent and that there was no subletting of the tenancy by the respondent. It was submitted that the respondent had been depositing rent before the rent controller upon the appellant's refusal to accept rent. It was pointed out that under section 2(g) of the West Bengal Premises Tenancy Act, 1997, an agent of a tenant was permitted to deposit rent on behalf of the tenant before the rent controller.

- 17.** Mr. Kar relied on a judgment of the Hon'ble Supreme Court in the case of ***Biswabani Pvt. Ltd. vs. Santosh Kumar Dutta & Ors.***⁴ for the proposition that if a tenant of a premise covered by the Local Rent Restriction Act remained in possession and continued to be a tenant on the date of creation of fresh tenancy such tenant could not be evicted by execution of the decree on the basis whereof the fresh tenancy was created. It was submitted that in order to get the tenant evicted, a suit for eviction would be required to be filed.
- 18.** Mr. Kar further relied on a Single Bench decision of the Bombay High Court in the case of ***Krishna Kashinath Patil vs. S. Mohandas Kamath***⁵ for the proposition that when a compromise takes place in the course of execution of a decree for eviction the compromise may extinguish the decree and create a fresh lease or the compromise may provide a new mode for discharge of the decree. The said judgment has in fact relied on the case of ***Kalloo (Smt) & Ors.*** (supra).
- 19.** The following judgments of the Hon'ble Supreme Court were relied on for the propositions that conferment of jurisdiction is a legislative function and that parties cannot confer jurisdiction on a Court by consent; that jurisdiction of a Court can be challenged at any stage; that if a Court lacked jurisdiction over the subject matter of the suit it could not take up the cause or the matter and that any order passed by a Court having no jurisdiction would be a nullity.

⁴ (1980) 1 SCC 185

⁵ 2001 SCC OnLine Bom 930

- i. *Zuari Cement Limited vs. Regional Director, Employees' State Insurance Corporation, Hyderabad & Ors.*⁶**
- ii. *Kanwar Singh Saini vs. High Court of Delhi*⁷**
- iii. *Harshad Chiman Lal Modi vs. DLF Universal Ltd. & Anr.*⁸**

ANALYSIS & DECISION:-

- 20.** The principal question that has fallen for our consideration in the case at hand is whether the compromise or consent decree dated June 23, 2014 is executable or not insofar as the same provides that “*at the expiry of ten years from the date of these terms of settlement, the defendant shall hand over peaceful vacant possession of the demise premises to the plaintiff and/or his successors in interest and or default thereof or in case of any other default by the defendant, the Plaintiff and/his successor in interest will be entitled to execute the decree to be drawn up herein and seek recovery of vacant possession without filing any fresh proceeding*”.
- 21.** The authorities that have been carried to Court by the parties clearly instruct us to be guided solely by the intention of the parties evinced by the settlement reached by them. Therefore, our endeavour should and would be to gather what the parties intended. Indeed if the parties intended that a fresh tenancy would be created which would be governed by the provisions of the West Bengal Premises Tenancy Act, 1997, then in such a case the respondent would not be liable to get evicted without following the course known to law. In such regard the question as to whether execution of a

⁶ (2015) 7 SCC 690

⁷ (2012) 4 SCC 307

⁸ (2005) 7 SCC 791

consent decree or of a decree passed on compromise would qualify for such a course or not would then also be required to be examined.

22. The relevant terms of the settlement arrived at between the parties that ultimately got incorporated in the compromise decree are as under:-

"1. The tenancy of the defendant as per the agreement dated 7th May, 1971 in respect of one shop room being No. 1A, on the ground floor at premises no. 30, Ganesh Chandra Avenue, Kolkata measuring about 1014 sq.ft. built up area is hereby surrendered by the defendant to the plaintiff/landlord.

2. Simultaneously with such surrender of the said tenancy to the plaintiff as stated above, the plaintiff/landlord shall and induct the defendant as the monthly tenant in respect of all that shop room being no. 1A/1, measuring about 507 Sq.ft. (being the fifty percent of the room no. 1A) and the wooden mezzanine floor in the said shop room on the ground floor of premises no. 30, Ganesh Chandra Avenue, Police Station Bowbazar, Kolkata-700013, morefully and particularly shown and delineated in red colour in the plan and/or sketch annexed hereto. The said shop room being no. 1A/1 shall also contain a toilet and two western side doors having inside opening of the said shop room being no. 1A/1. The western side gate of the said shop room being no. 1A/1 shall be use by the defendant, his men, agent and employees for ingress and egress only but not for any customers or for bringing in or taking out any heavy materials through the said doors and passage. It is further clarified that the western side passage of the building shall not be encroached upon by keeping any materials or otherwise.

4. It is agreed by the parties that the monthly rent for the said premises shall be Rs. 2000/- (Rupees Two Thousand) payable according to English Calendar month by the Defendant to the Plaintiff/landlord.

7. The area being room no. 1A/2, admeasuring about 507 Sq.ft. together with porch of the building shall remain in exclusive possession, use and enjoyment of the plaintiff/landlord. The defendant/tenant at no point of time shall raise any claim and/or demand in any manner whatsoever over in respect of the said room no. 1A/2, as shown in the sketch and delineated by green border and also in respect of porch shown in the sketch and delineated by yellow border.

9. *The name, style and status of the tenancy shall remain as G.C. Seal and Company, as proprietorship firm of the Defendant Gobin Chand Seal as usual and the same will be continued for a period of 10 years (Ten Years) without any alteration and/or amendment. It is agreed and made clear that the said tenancy will not be terminated prior to the stipulated period of ten years provided the terms and conditions as stipulated herein and also the grounds as provided in W.B. Premises Tenancy Act, 1997 are complied with strictly by Tenant/Defendant. It is agreed that at the expiry of ten years from the date of these terms of settlement, the defendant shall hand over peaceful vacant possession of the demise premises to the plaintiff and/or his successors in interest and or default thereof or in case of any other default by the defendant, the Plaintiff and/his successor in interest will be entitled to execute the decree to be drawn up herein and seek recovery of vacant possession without filing any fresh proceeding.*

10. *The allegations and counter allegations made between the parties, if any be and are hereby withdrawn.”*

23. The Hon’ble Single Judge has arrived at a conclusion that the earlier tenancy stood extinguished upon the same being surrendered and that a fresh tenancy came into existence in terms of the compromise decree. The Hon’ble Single Judge has found that the term of settlement to the effect that the appellant and/or his successor in interest would be entitled to execute the decree and seek recovery of vacant possession of the subject premises without filing any fresh proceeding was a condition in the teeth of Section 28 of the Indian Contract Act, 1872 and was therefore a nullity. The execution case has been held to be not maintainable by the Hon’ble Single Judge in the following words:-

“20. It is true that in Para 9 of the said consent decree it has been mentioned that the name, style and status of the tenancy shall remain as G.C. Seal and Company as proprietorship firm of the defendant Gobin Chand Seal and the same will be continued for a period of 10 years without any alteration and/or amendment. But in my view the

same is referred to only in respect of the tenanted premises measuring about 507 sq.ft. and nothing more than that. Para 9 of the said consent decree has referred only to the tenancy which came into being after surrender of the old tenancy as mentioned in Paras 1 and 2 of the consent decree. It is agreed between the parties by virtue of clause 9 that the name and style and status of tenancy in respect of the tenanted portion measuring 507 sq.ft. shall remain as G.C. Seal and the same will be continued for a period of 10 years without any change. This does not clearly show that it refers to the old tenancy or the original tenanted portion.

21. In fact there is no clear cut decree of eviction passed by the learned Trial Court. The decree stipulates that in case of default made by the defendant the plaintiff shall be entitled to execute the decree to 17 be drawn up and to seek recovery of vacant possession of the premises without filing any fresh proceeding. Needleless to mention that a contract or terms of settlement which restrain(s) the parties from bringing legal proceedings is void. The principle of law has been clearly laid down in Section 28 of Indian Contract Act, 1872. For the sake of convenience Section 28 of the Act, 1872 is reproduced herein below:-

“28. Agreements in restraint of legal proceedings, void.— Every agreement,— (a) by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or (b) which extinguishes the rights of any party thereto, or discharges any party thereto, from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights, is void to the extent.”

22. From the provisions of above section it has been laid down that any agreement by which any party is restricted from enforcing his right by legal proceedings in ordinary tribunal or which extinguishes the right of any party to enforce the same through legal process etc. is void to that extent.

23. In the instant proceeding it appears that the plaintiff has kept the right reserved for himself for eviction of the defendant without taking any eviction proceeding under the relevant laws in case there is any default on the part of the defendant in carrying out the conditions as mentioned in consent decree. This is clear violation of the provision of section 28 of the Indian Contract Act, 1872 or in other words the said terms of the agreement have come into a direct conflict with the settled principle of law. If the defendant is debarred from contesting in ordinary tribunal by stipulating that his eviction process shall be carried out without following the provisions of West Bengal

Premises Tenancy Act, 1997, or any other appropriate tenancy law, such an agreement is violative of Section 28 of the Act, 1872. Therefore, as the said agreement is violative of the provisions of the enactment of 1872, I find that the prayer for eviction through this execution process without availing the procedure laid down for eviction of tenant under tenancy laws cannot be implemented, particularly when there are sufficient materials to show that the old tenancy of the year 1971 came to end and the judgment-debtor was inducted in another monthly tenancy simultaneously with such surrender. The condition for proceeding with the execution process without availing the prescribed provisions for eviction of tenants under the tenancy laws is nothing but a nullity, and therefore the proposed execution of the eviction decree against the judgment-debtor cannot be proceeded with as the said relevant term is nothing but a void one.”

24. As already stated hereinabove, the principal question is as to whether the parties intended to create a new tenancy? A meaningful reading of the terms of the compromise, in the light of the attending facts however does not evince such intention. In fact, if the parties to the suit for eviction had intended to create a fresh tenancy in favour of the respondent, then they would not have left any scope for the decree of eviction to be executed any further.

25. It cannot be lost sight of that the appellant had sought for eviction of the respondent from shop room no.1A measuring 1014 sq.ft. by instituting a suit for eviction being C.S. 922 of 1986. In accordance with the terms of the compromise the respondent-tenant was to surrender the tenancy and was to be inducted in respect of shop room no.1A/1 measuring 507 sq.ft. (i.e. half-portion of shop room no.1A). The same happened. The fact that the space, which is now under the occupation of the respondent, is half-portion of the same shop room measuring 1014 sq.ft. which was being enjoyed by the respondent earlier (i.e. prior to the compromise) and which was partitioned

into two would be clearly evident from the sketch map referred to and appended to the compromise. The said sketch map contains area statements regarding the total covered area of the then existing shop room and store room and the proposed area to be in occupation of the tenant in terms of the compromise.

- 26.** It is therefore certain that the tenant was allowed to remain in possession of half-portion of the said shop room no.1A that had been numbered as shop room no.1A/1. Although the expressions used in the compromise terms to the effect that *“shop rum no.1A..... is hereby surrendered by the defendant to the plaintiff/landlord”* and that the *“plaintiff/landlord shall and induct the defendant as monthly tenant in respect ofshop room1A/1, measuring about 507 sq.ft. (being fifty percent of the shop room no.1A)”* at the first blush give the impression that a fresh tenancy was created in respect of the said shop room no.1A/1, yet all doubts are dispelled when the said terms are read collectively with clause 9 of the terms which provide that *“the defendant shall hand over peaceful vacant possession of the demise premises to the plaintiff and/or his successors in interest and or default thereof..... the Plaintiff and/his successor in interest will be entitled to execute the decree to be drawn up herein and seek recovery of vacant possession without filing any fresh proceeding”*. If indeed the parties intended that by employing words like *“surrender”* in respect of shop room no.1A measuring 1014 sq.ft. and *“induct”* in respect of shop room no.1A/1 measuring 507 sq.ft. there would be an end or extinguishment of the earlier tenancy and creation of a fresh tenancy, then the clause containing the promises of the respondent to pay rent regularly, to abide by

the terms of the compromise and to vacate the said premises upon expiry of ten years from the date of the compromise would not have been there. Similarly, the provision permitting the appellant to execute the decree within the period of ten years in case of default on the part of the respondent to abide by the terms of the compromise pertaining to payment and maintenance of the premises etc. in terms of the West Bengal Premises Tenancy Act, 1997 or in case of failure to vacate the said partitioned premises even after expiry of the said period of ten years would also not have been there in the compromise if the parties intended to treat the otherwise partial eviction of the respondent-tenant as complete satisfaction of the decree and the tenant's occupation of the partitioned tenanted premises as a fresh tenancy.

27. We may explain this situation further in the light of the provisions of Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (hereafter the "Code"). The said provision reads thus:-

"3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."

28. The said provision lists two ways for recording an agreement, compromise or satisfaction and for passing a decree in accordance therewith:-

- i. The first way is if it is be proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties;

OR

- ii. The next is if the defendant has satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit.

29. Insofar as the first way mentioned in the said provision is concerned, a written lawful agreement or compromise signed by the parties is mandatory while the same is not so for the second method.

30. Coming back to the case at hand, it is the first way that has been adopted. It is in this respect that the respondent has asserted that the compromise is not lawful inasmuch as the condition mentioned therein that the appellant would be entitled to execute the decree without filing a fresh proceeding, is abrogative of the protection granted to tenants under the West Bengal Premises Tenancy Act, 1997 and is hit by the provisions of Section 28 of the Indian Contract Act, 1872. Such assertion has been accepted by the Hon'ble Single Judge. However, such contention of the respondent would hold ground only if the intention of the parties is found to be one to create a fresh tenancy.

31. If the parties intended to put an end to the litigation, the condition as regards executability of the decree upon default being committed by the respondent as indicated in the compromise or upon failure to vacate the

subject premises after expiry of ten years would not have been made part of the compromise. Instead, the satisfaction of the plaintiff-appellant would have been recorded in terms of the second method provided in Order XXIII Rule 3 of the Code in the compromise thereby evincing that the hatchet had been buried completely and nothing further was required to be done.

32. Such is not the case here. In the case at hand, the appellant evidently remained 'unsatisfied' on the date of compromise since the eviction of the respondent till that point of time was only partial, as instead of vacating the entire tenanted shop room measuring 1014 sq.ft., the respondent had vacated only 507 sq.ft. but with a promise to vacate the balance portion of the suit premises after ten years. A right was also reserved to the appellant to execute the decree even within the said period of ten years if the respondent committed default in abiding by the terms which included the payment of rent. To be precise, the action of vacating the tenanted premises as prayed for in the plaint was far from being complete and there was still a promise left to be performed by the defendant-respondent. We are therefore unable to appreciate the argument made on behalf of the respondent that with the induction of the respondent in shop room no.1A/1 simultaneous with the surrender of the tenanted premises the compromise decree stood satisfied and as such there was no further scope of execution thereof.

33. Our conclusion derives support from a celebrated judgment of the Hon'ble Supreme Court in the case of ***Pushpa Devi Bhagat vs. Rajinder Singh &***

Ors.⁹ where the provision of Order XXIII Rule 3 of the Code was elegantly clarified thus:-

“18. Order 23 deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below:

“3. Compromise of suit.—Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:”

The said Rule consists of two parts. The first part provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined to the parties to the suit whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. We are not, however, concerned with this aspect of the Rule in this appeal.

19. What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to

⁹ (2006) 5 SCC 566

their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so "satisfies" the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any "enforcement" or "execution" of the decree to be passed in terms of it. Let us illustrate with reference to a money suit filed for recovery of say a sum of rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or specified manner or may agree that only a sum of Rs 75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and if the defendant does not fulfil the promise, the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or Rs 75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being "enforced" by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such "satisfaction" need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same. The difference between the two parts is this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second

part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied.

20. In a suit against the tenant for possession, if the settlement is that the tenant will vacate the premises within a specified time, it means that the possession could be recovered in execution of such decree in the event of the defendant failing to vacate the premises within the time agreed. Therefore, such settlement would fall under the first part. On the other hand, if both parties or the plaintiff submit to the court that the tenant has already vacated the premises and thus the claim for possession has been satisfied or if the plaintiff submits that he will not press the prayer for delivery of possession, the suit will be disposed of recording the same, under the second part. In such an event, there will be disposal of the suit, but no "executable" decree."

[Underscored by us for emphasis]

- 34.** If the respondent had really believed that a new tenancy had been created upon extinguishment of the earlier tenancy by way of the compromise agreement and that the respondent could not be compelled to hand over possession of the subject property by way of execution of the decree (since according to the respondent the term in the compromise agreement providing for execution of the decree to compel the respondent to hand over possession of the said property was not lawful being in defiance of the provisions of the West Bengal Premises Tenancy Act, 1997 and barred under Section 28 of the Indian Contract Act, 1872) as now contended, then it was open for the respondent to raise an objection to the same in terms of the proviso to Order XXIII Rule 3 of the Code itself. The respondent, however, has not done so and this creates a strong impression that the respondent also believed that the compromise in question did not result into a fresh tenancy or a new tenancy.

35. There is another way to look at the matter. It is now very well settled that a contract must be read as a whole and not piece-meal to gather the intention of the parties thereto. It is needless to mention that the compromise in question is nothing but a contract to which the Court has put its imprimatur. If we read the clauses wherein the words like “*surrender*” and “*induct*” have been used upon divorcing the same from the rest of the document and in the vacuum of the attending fact that the subject premises, in respect whereof the respondent now claims a new tenancy to have been created, is in fact half-portion of the premises that was in his occupation when the suit had been instituted, then, we are afraid, we would be doing violence to the compromise. It would have the undesirable effect of rendering one of the clauses consensually incorporated by the parties to the agreement wholly unlawful and lending credence to an obnoxious intent to evade a decree of Court passed on compromise without objection. The simple meaning that the terms of the compromise convey is that the respondent was allowed to remain in occupation of half-portion of shop room no. 1A upon vacating the other half, for another ten years on certain terms as mentioned in the compromise agreement, that decree would become executable as regards the said other half after ten years provided the tenant complied with the terms and conditions mentioned in the compromise agreement and that if the respondent violated the terms of the compromise, the decree could be executed within the said span of ten years as well.

36. This takes us to the next question raised by the respondent i.e. whether the term of the compromise decree which provides for eviction of the

respondent by execution of the compromise decree is unlawful being violative of the provisions of Section 12A of the West Bengal Premises Tenancy Act, 1997?

37. In terms of the provisions of Order XXIII Rule 3 of the Code before putting its stamp of approval on a compromise agreement, the Court must be satisfied that the same is lawful. It is now well settled that a compromise decree for eviction would be considered lawful if it is found that the Court which recorded the compromise had material before it to be satisfied that on the basis of such material it could have passed a decree of eviction.

38. As to what would constitute the “material” that could form the foundation of the Court’s satisfaction was felicitously explained by the Hon’ble Supreme Court in the case of **Nagindas Ramdas** (supra) cited by the appellant. The relevant portions thereof are extracted herein below:-

“27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.

30. *Be that as it may, in cases where an objection as to the non-executability of the decree on the ground of its being a nullity, is taken, the executing court is not competent to go behind the decree, if the decree on the face of it, discloses some material on the basis of which, the Rent Court could be satisfied with regard to the existence of a statutory ground for eviction. In such a case it must accept and execute the decree as it stands. If, on the face of it, the decree does not show the existence of such material or jurisdictional fact, the executing court may look to the original record of the trial court to ascertain whether there was any material furnishing a foundation for the trial court's jurisdiction to pass the decree it did. The moment it finds that prima facie such material existed, its task is complete. It is not necessary for it to go further and question the presumed or expressed finding of the trial court on the basis of that material. All that it has to see is whether there was some material on the basis of which the Rent Court could have — as distinguished from must have — been satisfied as to the statutory ground for eviction. To allow the executing court to go beyond that limit, would be to exalt it to the status of a super court sitting in appeal over the decision of the Rent Court. Since in the instant case, there was a clear admission in the compromise, incorporated in the decree, of the fundamental facts that could constitute a ground for eviction under Section 12(3)(a), the executing court was not competent to go behind the decree and question its validity.”*

[Emphasis supplied by us]

39. We may now assess as to whether there was any material of the nature indicated by the Hon’ble Supreme Court in **Nagindas Ramdas** (supra) on the basis whereof the Court could have reached a satisfaction that it could pass a decree of eviction.

40. The additional written statement filed by the defendant-respondent in the suit forms part of the pleadings before us. The same evinces that pleadings for eviction on the ground of reasonable requirement were incorporated in the plaint by way of an amendment. The pleadings for eviction on the ground of reasonable requirement have been denied in the written statement filed by the respondent. Despite such denial, the respondent agreed to vacate the tenanted premises and in fact vacated half-portion thereof on the date of the compromise itself. The parties (i.e. the appellant and the

respondent) agreed to postpone the respondent's vacation of the balance half of the said shop room for ten years on certain terms. Thus the while on the one hand the appellant promised not to oust the respondent immediately from the said balance half of the shop room provided certain conditions mentioned in the compromise agreement were complied with, the respondent on the other hand promised to remain in occupation of the said premises only for ten years on the terms mentioned in the compromise and to vacate the same after expiry of ten years. The respondent has thus by vacating the suit premises partially and by promising to vacate the balance half thereof, after expiry of ten years from the date of the compromise, impliedly admitted such ground of reasonable requirement of the appellant-landlord notwithstanding the denial thereof in the pleadings.

41. We are satisfied that this constituted enough material on the basis whereof the Court could have (*as distinguished from must have*) passed a decree of eviction.

42. We are conscious that the Hon'ble First Court, while recording the compromise and decreeing the suit on the basis thereof has not expressly recorded its satisfaction as regards the lawfulness of the compromise. That, however, cannot by itself, invalidate the compromise decree, inasmuch as there is presumption that the Court was so satisfied unless the contrary is proved. Law in this regard is well settled. Paragraph 25 of the judgment in the case of **Amteshwar Anand vs. Virender Mohan Singh & Ors.**¹⁰ may be noticed in such regard. It reads thus:-

¹⁰ (2006) 1 SCC 148

*“25. The next question raised by the appellants relates to Order 23 Rule 3 of the Code. According to them the procedure envisaged under that provision had not been complied with either in passing the orders on 18-3-1993 and 27-5-1993 when the agreements were taken on record or when the final decree was passed on 25-8-1993. It is a matter of record that when the appellants filed applications (IAs Nos. 1860 and 4252 of 1993) for accepting the first two agreements under Order 23 Rule 3, the applications set out the clauses of the agreements verbatim. The applicants had affirmed separate affidavits in support of their respective applications, affirming on oath that they were fully conversant with the facts and circumstances of the case and that the applications had been drafted and filed under their instructions and that the statements of facts contained in the applications were true and correct to their knowledge. Order 23 Rule 3 casts an obligation on the court to be satisfied that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties. On the material before it, the High Court would have had no reason to hold that the suits had not been adjusted as affirmed by the parties to the application. It was not necessary for the Court to say in express terms that it was satisfied that the compromise was a lawful one. There is a presumption that the Court was so satisfied unless the contrary is proved [See *Suleman Noormohamed v. Umarbhai Janubhai*, (1978) 2 SCC 179 : AIR 1978 SC 952] . No doubt in *Ajad Singh v. Chatra* [(2005) 2 SCC 567] this Court has said that the suit could not have been disposed of except by recording its satisfaction as contemplated by Rule 3 Order 23 of the Code. However, in that case there was in fact no proceeding under Order 23 Rule 3 at all. There the suit was decreed by the trial court on the basis of a compromise which had been entered into during the pendency of the suit which was not only on plain paper but was executed in a police station. This Court held that the suit could not have been disposed of except by recording the compromise and by following the procedure contemplated by Rule 3 of Order 23. The decision is therefore distinguishable on facts.”*

[Emphasis supplied by us]

- 43.** There is yet another way to look at the matter. The suit in question was instituted in the year 1986. At the relevant point of time, when the suit had been instituted, the West Bengal Premises Tenancy Act, 1956 was in force and therefore the provisions of the said Act of 1956 applied to the suit. Section 13 of the said Act of 1956 provides for protection of tenant against

eviction. Some of its provisions which are relevant for our purpose may now be noticed:-

“13. Protection of tenant against eviction:

(1) Notwithstanding anything to the contrary in any other law, no order or decree for the recovery of possession of any premises shall be made by any Court in favour of the landlord against a tenant except on one or more of the following grounds, namely :-

f) [subject to the provisions of sub-section (3A) and section 18A, where the premises are reasonably required by the landlord for purposes of building or re-building or for making thereto substantial additions or alterations, and such building or re-building, or additions or alterations, cannot be carried out without the premises being vacated;

ff) subject to the provisions of sub-section (3A), where the premises are reasonably required by the landlord for his own occupation if he is the owner or for the occupation of any person for whose benefit the premises are held and the landlord or such person is not in possession of any reasonably suitable accommodation;

(4) Where the landlord requires the premises on any of the grounds mentioned in clause (f) or clause (ff) of sub-section (1), and the Court is of opinion that such requirement may be substantially satisfied by ejecting the tenant or a sub-tenant from a part only of the premises and allowing the tenant or the sub-tenant to continue in occupation of the rest, then, if the tenant or a sub-tenant agrees to such occupation, the Court shall pass a decree accordingly and fix the proportionate rent for the portion remaining in the occupation of the tenant or the sub-tenant. The rent so fixed shall be deemed to be the fair rent for purposes of this Act. If the tenant does not agree but a sub-tenant agrees to such occupation, no decree or order for ejectment shall be passed against such sub-tenant and such sub-tenant shall become, with effect from the date of the decree or order, a tenant directly holding under the landlord.”

- 44.** A perusal of the above would show that if the Court is satisfied that the landlord’s purpose would be served by partial eviction and if the tenant so agrees then the tenant can be evicted from the tenanted premises partially while allowing the tenant to continue in occupation of the rest upon fixing of

proportionate rent for the portion under the tenant's occupation. In the case at hand if the Court was so satisfied as provided in Section 13(4) of the said Act of 1956, then upon the tenant agreeing to be partially evicted, the Court would have decreed the suit only to that extent and would have fixed the proportionate rent for the portion remaining in occupation of the tenant in terms of the said provision. In fact the tenant also had an option not to agree to his eviction from the entirety of the property even after ten years inasmuch as the tenant could continue in the balance portion of the original tenancy after being partially evicted therefrom. However, the case here is absolutely different. It is clear that the tenant believed that there was good ground for him to be evicted from the premises wherefor he agreed to a bargain of being allowed to remain in the balance portion of the premises for another ten years and equally so, the Court was satisfied that the landlord was entitled to a decree of full eviction on the facts of the case and as such allowed the parties to enter into a compromise whereby there would be total eviction of the tenant in phases i.e. eviction from half of the tenanted premises immediately and eviction from the balance half - ten years later, as agreed.

- 45.** While on this we also take the opportunity to assert that the respondent's conduct of entering into a compromise without raising any objection as regards the presently perceived illegality in one of its provisions that provides for execution of the decree for eviction of the respondent from the subject premises is utterly abhorable. It is one thing to say that a Court has passed a decree that is illegal but it is absolutely different thing to say that although the parties knowingly entered into a contract and allowed the same

to mature into a decree of Court yet any of the parties will have freedom to resile from the same and challenge the same subsequently by taking a contrary stand. The Respondent having accepted the compromise decree for all these years without raising any objection cannot now be permitted to find fault with it. (See ***Byram Pestonji Gariwala vs. Union Bank of India & Ors.***¹¹)

46. Now we come to the other ground urged by the respondent as regards jurisdiction of the Court to evict the tenant by executing the compromise decree. The jurisdiction of the Executing Court has been questioned by asserting that since the compromise agreement led to creation of a fresh tenancy under the said Act of 1997 therefore the respondent could be evicted only upon a suit being instituted in a Court having jurisdiction in terms of Section 12A of the said Act read with Schedule IV thereof. The argument was thus premised on the coming into existence of or creation of a fresh tenancy. We have already found hereinabove that the parties did not intend to create a fresh tenancy at all; rather the intent was to postpone the respondent's eviction for ten years. Mere use of the words "*tenant*", "*rent*", "*surrender*" and "*induction*" in the compromise agreement would not lead to creation of tenancy, if the actual intent of the parties was not so. It is not disputed before us that the Hon'ble First Court which passed the compromise decree had jurisdiction to try and decide the suit for eviction of the respondent as instituted by the appellant. The suit was therefore decreed by a Court having jurisdiction. The compromise decree is lawful.

¹¹ (1992) 1 SCC 31

The Executing Court before which the case for execution of the compromise decree was launched had/has the jurisdiction to execute the decree. In view thereof we find no reason to countenance the argument as regards lack of jurisdiction, advanced on behalf of the respondent.

47. The aforesaid reasons also annul the finding of the Executing Court that the compromise agreement is in the teeth of the provisions of Section 28 of the Indian Contract Act, 1872. To wit, the term in the compromise agreement, which provides that the appellant would be entitled to take possession of the subject property upon evicting the respondent by executing the compromise decree, would have been hit by the provisions of Section 28 of the Indian Contract Act, 1872 if a fresh tenancy that could be governed by the West Bengal Premises Tenancy Act of 1997 had been created but since we have found that there was no intention of the parties to create any such tenancy and therefore no such tenancy was created by the compromise agreement, as such the question of the said term being barred under or hit by the provisions of Section 28 of the Indian Contract Act, 1872 as aforesaid does not and cannot arise at all.

48. In view of the abovementioned reasons, it cannot be said that the execution case was not maintainable as held by the order impugned.

49. Before proceeding further, the judgments cited by the parties, which have not been considered hereinabove, may be dealt with. **Mumtaz Yarud Dowla Wakf** (supra) is an authority for the proposition that no person can be allowed to approbate and reprobate i.e. accept and reject the same thing. Indeed once the respondent has taken advantage of the same decree that he now seeks to avoid, he cannot turn around and question its validity.

50. Kalloo (Smt) & Ors. (supra) relied on by the appellant instructs that to ascertain as to whether a new tenancy has been created or not the intention of the parties should be gathered from the terms of the compromise. We have undertaken such exercise and found that the parties did not intend to create a new tenancy as alleged by the respondent.

51. Biswabani Pvt. Ltd. (supra) relied on by the respondent has turned on its own peculiar facts where there was no indication in the compromise decree that the tenant would be evicted by executing the compromise decree. On the contrary, in the said case the parties had entered into a fresh tenancy agreement for fifteen years that remained unregistered. It was in such a fact situation that the Hon'ble Supreme Court held that the parties intended to create a fresh tenancy. The said judgment does not aid the respondent at all.

52. Krishna Kashinath Patil (supra) has again been decided in favour of the tenant on the basis of the peculiar fact situation obtaining in the said case where the parties were found to have intentionally created a fresh tenancy. Interestingly, in the said case the decree was not found to be a nullity and the said findings clearly support the appellant's case. The same are extracted herein below:-

“37. In order to infer such satisfaction one has to turn to the compromise decree in question. In this case, the order does not record satisfaction of the Court but on the facts of this case it is clear that the burden was upon the tenant to prove that he did not admit the statutory grounds for eviction sought to be made in the suit. The admission on the part of the tenant can be safely inferred and conclusion can be drawn that there was no serious dispute to be tried and if a decree for possession would not have been passed in invitum the tenant would not have got 15 years' time to occupy the suit premises; that he, therefore, agreed to suffer a decree by consent and gained 15 years' time under it with right to reconstruct and occupy newly constructed

premises. The very fact that the tenant agreed to reconstruct the premises at his own cost is sufficient to infer damage caused to the suit premises by the tenant. This circumstances itself can be treated as admission on the part of the tenant about existence of statutory ground warranting decree for eviction mentioned in section 13(1)(o) of the Bombay Rent Act.

38. The tenant, based on a compromise decree, not registered lease deed executed in his favour and erected new structure in place of old one and occupied the same for 15 years, thus it is clear that the compromise decree did not remain a paper decree but the same was acted upon by the parties to the decree. The learned counsel for the petitioner also relied on the presumption that every compromise under Order 23, Rule 3 of CPC shall be presumed to be lawful unless it is proved to the contrary. Thus in the peculiar facts and circumstances of this case, it is clear that there was an implied admission by the tenant of the ground at least contained in section 13(1)(a) of the Bombay Rent Act. The existence of this one ground is sufficient to sustain decree for eviction. Apart from this the respondent is claiming right to remain in possession on the basis of registered lease deed which itself was the out-come of compromise decree. He acted upon the said decree by paying Rs. 1,000/- to the plaintiff. In this view of the matter, it is not open for the respondent to blow hot and cold and contend that the decree in question is a nullity. He is bound by the terms of compromise and consequently decree in question. It is, therefore, not possible to hold that decree in execution is a nullity. Accordingly, the issue No. (i) is answered in negative i.e. in favour of the petitioner and against the respondent.”

53. Krishna Kashinath Patil (supra) has repelled the argument as regards the decree being a nullity by relying on an implied admission in the compromise agreement. In fact the principle that implied admission made in the compromise agreement would form sufficient basis for a Court to be satisfied as regards the grounds for eviction was explicitly set forth by the Hon’ble Supreme Court in **Nagindas Ramdas** (supra). We have also applied the same principle in the case at hand to reach the conclusion that the decree in question is executable.

54. Zuari Cement Limited (supra), **Kanwar Singh Saini** (supra), **Harshad Chiman Lal Modi** (supra) are authorities for the proposition that a decree

passed by a Court lacking jurisdiction is a nullity. The said proposition is well settled however, the same is not applicable to the present case since the decree has been passed by the Hon'ble First Court rightly as well as rightfully. There is no defect of jurisdiction at all.

- 55.** We have noticed that the Executing Court has in a sense by-passed the determination of the question as to whether default had been committed by the respondent or not since the Court was of the view that the execution case itself was not maintainable.
- 56.** The observations of the Executing Court clearly reveal that the Executing Court has glossed over the issue as regards the allegation of commission of default by the respondent which led to the initiation of the execution proceeding. The Executing Court should have considered the issue as regards default properly on merits and not "*on the basis of prima facie material brought of record*" as observed by it in paragraph 24.1 of the judgment and order impugned. The provisions of Section 47 of the Code are very clear in such regard. If any objection as regards the executability of the decree is raised by the judgment debtor, it is the duty of the Executing Court itself to determine the same, not on a *prima facie* basis but finally.
- 57.** However, that question need not detain us further, inasmuch as we find that during pendency of the present appeal, the period of ten years as mentioned in the compromise decree, after which the respondent had agreed to vacate the subject premises and upon expiry whereof, the compromise decree became executable has also expired. Since the decree is clearly executable on that ground, therefore we find no reason to go into the details

of the deposits made before the rent controller and assess the validity thereof.

58. We therefore allow the appeal, set aside the judgment and order dated May 03, 2024 passed in Execution Case No. 364 of 2021 and direct the respondent to hand over vacant physical possession of the property in question to the appellant within a period of four weeks from date failing which the Sheriff shall take appropriate steps to recover possession of the said property from the respondent and hand-over to the appellant in accordance with law. APOT 219 of 2024 stands thus disposed of along with the connected application. No costs.

59. Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(Arijit Banerjee, J.)

(Om Narayan Rai, J.)