

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.O. 3908 of 2024

Tamalika Mazumder & Ors.

Vs.

Indrani Dey & Anr.

For the Petitioner : Mr. Sabyasachi Mondal
Ms. Payel Khanra

For the Opposite Parties : Mr. Apurba Kumar Ghosh

Heard on : 13.01.2026

Judgment on : 28.01.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein have assailed the order dated May 17, 2024 passed by Civil Judge (Jr. Division) 5th court Howrah in Misc. case No. 17 of 1995, arising out of Execution no. 26 of 1991. By the order impugned learned Court below rejected the petitioners Application under section 47 of the Code of Civil Procedure.

2. Being aggrieved by the aforesaid order learned Counsel for the petitioner submits that a suit being TS 30 of 1980 for eviction and recovery

of possession was filed against predecessor of petitioners and the said suit was decreed on 26.06.1991. The decree holder filed aforesaid Title execution case no. 26 of 1991, where the petitioner had filed above Misc. case under section 47 of the Code of Civil Procedure contending that after passing the decree the predecessor in interest of the opposite party (OP) on 14.02.1994 entered into a fresh tenancy agreement. In the said Misc. case after completion of deposition of PW1 the petitioners summoned PW2 for adducing evidence but said witness did not turn up. The predecessor of petitioners filed Application under section 32 of the Code for issuance of warrant to ensure attendance of the PW2 in the year 2014 and thereafter by an order dated 18.06.2022, the executing court rejected petitioners aforesaid prayer. Thereafter petitioner filed requisites and prayed for issuance of fresh summon upon PW2 but the court below rejected the prayer on 19.12.2022.

3. Being aggrieved by the said order petitioner preferred a Revisional Application before this court being CO 357 of 2023, whereupon by an order dated 03.04.2023, this court was pleased to dispose of the Revisional Application by giving an opportunity to petitioners subject to payment of cost of Rs. 20,000/- to the High Court Legal Services Authority, but owing to paucity of money the petitioners could not deposit the same. Thereafter learned Executing Court after hearing argument and without examining PW2 rejected petitioners aforesaid Misc Case filed under section 47 of the Code.

4. Being aggrieved by the aforesaid order learned Counsel for the petitioner submits that the predecessor of the opposite party had issued the

receipt regarding payment of sum of Rs. 10,000/- on February 14, 1994 as advance in respect of creation of new tenancy, which was started from March 1994 but the court below failed to consider the same. He further submits that a formal agreement is not necessary to attract section 53A of Transfer of Property Act but all that is required is that an agreement by transferor, which can be gathered from the evidence and in this context he relied upon the judgment reported in **AIR 1950 SC 1 (Maneklal Mnsukhbhai Vs. Harmutsji Ginwaka & sons)**.

5. His further contention is that while recording discharge or satisfaction of a decree, the executing court can decide all questions raised before it, to avoid multiplicity of proceedings and for rendering effective adjudication of the lis. In this context he relied upon the judgment of **Rahul S. Shah Vs. Jinendra Kumar Gandhi and Ors.** reported in **(2021) 6 SCC 418**.

6. Learned counsel for the petitioner strenuously argued that it is quite evident from the order impugned that learned Court below, while deciding the issue, has miserably failed to reach to the conclusion as to whether the document of payment marked as exhibit-1 is either an agreement or a receipt of payment and as such rejection of the plea of the petitioner under misconception of the exhibited document is bad and illegal.

7. Learned counsel for the opposite party Mr. Ghosh opposed such prayer and submits that such frivolous application has been filed only to deprive decree holder to enjoy fruits of the decree which he had obtained 35 years back.

8. I have considered submission made by the petitioner & opposite party.

9. On perusal of the order impugned it appears that Id. Court below has specifically recorded that

(i) Exhibit 1 is a document which does not bear signature of both the parties

(ii) Though the name of two witnesses namely Madan Patra and Tushar Pal are appearing in the said exhibit 1 but the petitioner did not bring them before the court to corroborate the petitioners contention that it was tenancy agreement

(iii) The document marked exhibit 1 is not a tenancy agreement and there was no undertaking of granting rent receipt

(iv) Exhibit 1 was written on a stamp paper which shows that the said stamp paper was purchased on 27.02.1994 but exhibit 1 was executed on 14.02.1994, which itself shows that exhibit 1 is a doubtful document and manufactured for the purpose of Execution Case.

10. Therefore the court below came to a finding that there is nothing in the document stating that the tenancy was created in favour of judgment debtor and there appears to be no offer and acceptance. Neither there exists meeting of minds with common intention which can be made through offer and acceptance. He further held tenancy right is a legal Right and in order to establish such right there must be privity of contract between the land lord and tenant and merely a statement that someone received Rs. 10,000/- towards security deposit for creating tenancy is not sufficient to construe the said document as agreement in the absence of any corroboration by the witness.

11. It is trite law that sine quo non to create an agreement or for that matter novation of an agreement for tenancy is mutual assent or a meeting of the minds i.e. consensus ad idem. This essential element of an agreement refers that the parties must agree to the same essential terms, without which no contract or legally binding agreement can exist. It is elementary that for a lawful agreement there must be a clear offer of novation, of contract in respect of self-same premises by one party and an unequivocal acceptance by the other, without which an agreement even if executed may be void and/or unenforceable.

12. From the facts and circumstances of the instant case and also on perusal of exhibit 1, it appears that it does not bear signature of both the parties to form an agreement and furthermore judgment debtor failed to explain as to how the document which was executed allegedly on 14.2.1994 was written on a stamp paper which was purchased on 27.02.1994 and as such the document itself is suspicious and the judgment debtor has miserably failed to remove the doubt during the course of hearing. Furthermore no witness has also supported his case of agreement of tenancy. There is no mention in Ex-1 that it was executed in favour of judgment debtor nor it was executed in respect of suit property and on the contrary it clearly refers to a separate block on the eastern portion of holding No. 60 Kaibarta Para Lane, Malipanchghara, Howrah and as such by no stretch of imagination it can be construed as novation of agreement of tenancy in respect of suit premises and as such I do not find any reason to interfere with the observation of the court below.

13. The jurisdiction under Article 227 of the Constitution of India is to be invoked where there is gross and manifest failure of justice or there appears to be any illegality or perversity committed by the court below while passing the impugned order. In other words High Court is supposed to interfere where due to its non-interference a grave injustice would remain uncorrected. Possibility of another view from the facts and circumstances of the case, is no ground for invoking jurisdiction under article 227 of the Constitution of India to upset pure findings of the fact, which is within the domain of an Appellate Court only.

14. In such circumstances, I do not find any merit in the Application. It appears that the Execution proceeding is pending since 1991 i.e. for about 35 years and as such the court below is directed to dispose of the Execution proceeding at the earliest.

15. CO 3908 of 2024 stands dismissed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Dr. AJOY KUMAR MUKHERJEE, J.)