

Misc Case no. 34 of 2025

CNR No.WBSP03-000490-2025

**Present : Smt. Mallika Biswas, Civil Judge (Junior Division) 2nd Court,
Alipore, South 24 Parganas
(JO Code : WB 01034)**

Order dated : 10.08.2026

Today is fixed for passing order in respect of the petition dt.17.09.2025 filed by the decree holders/opposite parties no. 1 to 7 as to the maintainability of the above Misc. Case.

Heard the Ld. Advocates of both sides in extenso on the point of maintainability of the instant Misc. Case.

The petitioner has filed the above Misc. Case application under Order 21 Rule 99 to 101 read with Section – 47 and 151 of the Code of Civil Procedure, 1908, praying for the reliefs mentioned in the prayer portions of the said petition (Misc. Case No. 34 of 2025). Though applicant/petitioner in the above Misc. Case has prayed for a declaration that the petitioner is a lawful tenant and was in possession of the property being premises no. 62, Alipore Road, Kolkata – 700027 mentioned in schedule to the said petition, but under whom the petitioner is claiming the said tenancy that has not being mentioned in the prayer portion of the said petition.

Along with the above Misc. Case petition, the petitioner also filed an application under order 39 rule 1 & 2 read with section 47 and 151 of Civil Procedure Code, 1908 for an order of injunction restraining the decree holders/opposite parties no. 1 to 7 from changing the nature and character of the Schedule of property mentioned in the said petition and also not to create any third party interest and not to transfer and not to further demolish and also preserve movable goods and machinery in the said premises and also for stay of further proceedings of the Ejectment Execution Case No. – 47 of 2008.

The decree holders/opposite parties no. 1 to 7 entered appearance in the above Misc. Case and have filed objection against the said injunction application. The petitioner has also filed one supplementary affidavit in relation to their injunction application.

The decree holders/opposite parties have filed an application under section – 151 of C.P. Code as to the maintainability of the above Misc. Case and also prayed for take up the hearing on the point of maintainability of the instant Misc. Case as preliminary point first, which will go to the root of the above Misc. Case before going into the merit of the instant Misc. Case. The petitioner of the instant Misc. Case has also filed their objection to the maintainability petition filed u/s 151 of the Civil Procedure Code by the opposite parties/decreed holders no. 1 to 7.

On consent of both the parties I take up the hearing of the maintainability of the above Misc. Case first which goes to the root of the above Misc. Case.

The facts of the petitioner's case in a nutshell that the petitioner/applicant was in occupation of All that piece and parcel of tin-shed one Godown, two store room, one big size machinery room measuring more or less 4,000 square feet known and identified as SHRI BISHNU OIL MILLS at 62, Alipore Road, Post & P.S. – Chetla, Kolkata – 700027, South 24 Parganas. It also appears from the Misc. Case petition that the petitioner has made the sole defendant Sri Krishna Gopal Mondal, who died some time in 2007, as an opposite Party No. 8.

The petitioner has stated in paragraph no. 1 of their Misc. Case application that lastly they are tenant under land lord namely Swadesh Ranjan Das @ Bhaskar Das and Jolly Das at a monthly rental of Rs. 1,480/- and they are running their business after obtaining trade license from the KMC, electric metre from CESC and other relevant documents in respect of 62, Alipore Road, Kolkata – 700027. It is the further case of the petitioner that the petitioner was ousted without due process of law from the said premises on 24.02.2025 at around 12.30 pm by some unknown person who claimed to be Court Bailiff and Police personals. The petitioner tried to resist them but they failed to do so and possession was taken by the decree holders through Court Bailiff.

The petitioner has also stated that the Judgement and Decree passed ex- party on 30.08.2008 in Ejectment Suit No. 58 of 2007 passed by this Ld. Court is void, collusive, inexecutable, fraudulent, false and never acted upon or force upon the petitioner above named. The petitioner further stated that the opposite parties obtained the said Judgement and Decree against the defendant/opposite party are collusive/fraudulent and has got such decree of eviction by suppression of fact and unclean hand, behind the back of the petitioner and its land lord whereas the petitioner is a bona fide tenant. The petitioner has also stated that in the schedule of the said decree passed in Ejectment Suit No. 58 of 2007 no where there is mentioned of premises no. 62, Alipore Road. In short the petitioner has stated that the decree has been passed in respect of premises no. 62A and not 62 Alipore Road, so they cannot be evicted from 62, Alipore Road.

The petitioner has prayed for a declaration that the petitioner is a lawful tenant and was in possession of the property being premises no. 62, Alipore Road, Kolkata – 700027. The petitioner has further sought for declaration that the judgement and decree passed in Ejectment Suit No. 58 of 2007 passed by this Ld. Court is void, fraudulent, collusive, not binding upon the petitioner and not executable which has been obtained by the opposite parties/decreed holders by suppression of fact and unclean hand and also for injunction not to change the nature and character of the schedule property, not to create any third party interest thereon, direction upon the opposite parties to pay damages 1 crore for causing damages to the “B” Schedule properties of the Misc. Case petition and also to stay of the Ejectment Execution Case No. 47 of 2008 of this Ld. Court.

On the basis of the above facts and circumstances the petitioner has filed an application under order XXXIX Rule I & II read with Section 47 and 151 of Civil Procedure Code, for passing an order of ad-interim and temporary injunction against the opposite parties and their mens and agents restraining them from changing the nature and character of the “A” Schedule property and

cannot create any third party interest and not to transfer and not to further demolish and preserve movable goods and machinery in the said premises/property till the hearing of the injunction petition as well as the above Misc. Case and also stay of further proceeding of the Ejectment Execution Case No. 47 of 2008.

The opposite parties after entered appearance in the above Misc. Case have filed an application under section 151 of the C.P. Code as to the maintainability of the above Misc. Case and they also filed written objection against the petitioner's injunction application.

The facts leading to filing of the said petition under section 151 of the C.P. Code in a nutshell are as follows :-

The opposite parties no. 1 to 7 have stated in the said petition that the petitioner who is a third party/stranger has no locus standi to file the above Misc. Case. They have no legal right to question, challenge or object to the judgement and decree passed in Ejectment Suit No. 58 of 2007 by this Ld. Court against the original tenant Krishna Gopal Mondal. In the present Misc. Case the petitioner has purportedly prayed for a declaration that the petitioner is the lawful tenant and has independent rights in respect of subject premises situated at no. 62, Alipore Road, Kolkata – 700027 along with other consequential reliefs. Such reliefs are wholly misconceived, baseless and untenable. It is settled proposition of law that when the principal relief as sought for is incapable of being granted, no consequential reliefs can be conferred by the Ld. Court. The petitioner is nothing but ranked trespassers/unauthorized occupier and absolute stranger. They are acting at the behest of one Swadesh Ranjan Das alias Bhaskar Das who has no right title interest in respect of premises no. 62A, Alipore Road (formerly 62, Alipore Road) P.S. – Chetla, Kolkata – 700027 being one of the decretal properties. The petitioner has been setup by the said Swadesh Ranjan Das alias Bhaskar Das solely with a view to prolong the proceeding and to harass the decree holders for extorting money. The said Swadesh Ranjan Das alias Bhaskar Das, behind the curtain, is orchestrating and also manoeuvring the present proceeding and is the principal mischief maker and master mind behind the filing of the instant Misc. Case.

It is pertinent to mention here that the petitioner has not mentioned in prayer – a (principal relief) of the said petition that under whom it is claiming independent tenancy. On this point the petitioner is conspicuously silent. The petitioner has also stated that they were evicted from the said premises without impleading the petitioner as a necessary party in the Ejectment Suit No. – 58 of 2007 of the court of the Ld. 2nd Civil Judge (Junior Div.) at Alipore and also in Ejectment Execution Case No. 47 of 2008. So, they have filed the instant Misc. Case for declaration that the decree passed on 30.05.2008 against Ms. Anjali Roy in T.S. No. 58 of 2007 does not bind them in any manner and they have independent right to possesses the said premises described in the schedule of the said petition. They have been ousted without due process of law and also for their restoration of the possession of the said premises. Under the above facts and circumstance, the petitioner has filed the instant Misc. Case.

The opposite parties/decreed holders no. 1 to 7 have stated that the petitioner has no locus standi to file the present Misc. Case. The decree passed in Ejectment Suit No. – 58 of 2007 against the K.G. Mondal, tenant, son of Late Balahari Mondal cannot be challenged by a rank trespassers or third degree sub tenant. The above Misc. Case is a gross abuse of the process of law.

It appears from the Misc. Case application and also the submission made by the senior advocate of the petitioner, that the petitioner is claiming tenancy at premises no. 62, Alipore Road, Kolkata – 700027 and not at 62A, Alipore Road from one Swadesh Ranjan Das alias Bhaskar Das. It is there case that their predecessor was inducted initially in that premises by Dulal Das thereafter Balahari Mondal and lastly by Swadesh Ranjan Das @ Bhaskar Das and Jolly Das. They have alleged that those persons were the owner of the said premises no. 62, Alipore Road, Kolkata – 27. In support of that contention the petitioner has not produced a single document that those persons were the owners of premises no. 62, Alipore Road, Kolkata – 700027. There is no existence of premises no. 62, Alipore Road since August, 1964. The said premises has been bifurcated in six premises. The opposite parties no. 1 to 7 of the present Misc. Case who have filed the maintainability application have claimed ownership of only premises no. 62A, Alipore Road, which is one of the decretal properties, which they obtained possession through the Court Bailiff on 24.02.2025 along with other decretal properties. It has already been decided by the Hon'ble Division Bench of the High Court at Calcutta in Appeal from Original Decree No. 211 of 1947, that Balahari Mandal was a yearly tenant and not the owner of premises no. 62, Alipore Road and 42, Raja Santosh Road, Kolkata – 27. Similarly, Swadesh Ranjan Das @ Bhaskar Das was neither the owner nor the landlord of premises no. 62, Alipore Road. Swadesh Ranjan Das himself is a rank trespasser, then issuance of alleged Rent Receipt in favour of the present petitioner doesn't create any tenancy in favour of the present petitioner. The opposite parties 1 to 7 who are the owners of premises no. 62A, Alipore Road, including other decretal properties are not bound by the mischievous act perpetrated by the said Swadesh Ranjan Das @ Bhaskar Das. The present petitioner is relying on the purported receipt issued by the said Swadesh Ranjan Das @ Bhaskar Das and claiming their alleged tenancy then the opposite parties is in no way liable for that. When Swadesh Ranjan Das @ Bhaskar Das himself is an outsider stranger, who has no connection with premises no. 62, Alipore Road, then the present petitioner cannot claim any sort of tenancy in the said premises.

The opposite parties/decreed holders have challenged the locus standi of the petitioner as to the filing of the above Misc. Case. The status of the petitioner was nothing but a trespasser or unauthorized/illegal occupier in respect of the said property. The petitioner had or has no right to challenge the Judgement and decree that was passed on 30/05/2008 in the Ejectment Suit No. 58 of 2007 against the original tenant Krishna Gopal Mondal alias Krishna Gopal Roy, son of Late Balahari Mondal, by this Ld. Court. They are bound by the decree that was passed against the original tenant K.G. Mondal alias Roy since deceased.

The Ld. Advocate of the decree holders/opposite parties also submit that since 22.08.1964 there is no existence of premises no 62, Alipore Road. It has been separated by six premises to that effect they have filed KMC assessment record of 1964. The decree holders are concerned about only premises no. 62A, Alipore Road, because they are the owner of the said premises. In respect of the other premises 62B to 62F they have no interest or connection. The opposite parties /decree holders submit that the petitioner was/is stranger/unauthorised occupier. The opposite parties/ decree holders submit that the instant Misc. Case is mala fide, speculative, harassing and liable to be rejected in limini with exemplary cost.

After going through the petitions, objections, materials and copy of the documents on record meticulously this court is of the opinion that the petitioner had or has no right or locus standi to challenge the said Judgement and Decree passed on 30.08.2008 in Ejectment Suit No. 58 of 2007 against the original tenant Krishna Gopal Mondal @ Krishna Gopal Roy, since deceased. The said judgement and decree is legal, valid and binding upon the petitioner and the decree was not obtained by practising any fraud. The said Judgement and Decree was upheld up to the Hon'ble Apex Court in SLP No. 5257 of 2019 vide order dated 06.09.2022 in the case of Shalimar Chemical Works Limited –vs- Usha Holding & Enclave Pvt. Ltd. & others in Misc. Case No. 849 of 2008 of this Ld. Court. M/s. Shalimar Chemical Works Limited filed the said Misc. Case against the present decree holders/opposite parties challenging the Judgement and Decree passed in Ejectment Suit No. 58 of 2007 against Krishna Gopal Mondal alias Krishna Gopal Roy in Ejectment Execution Case No. 47 of 2008.

I have gone through the Misc. Case application under order 21 Rule 99, 100 and 101 read with Section – 47 and 151 of the C.P. Code filed by the petitioner, the maintainability application filed by the decree holders/ opposite parties no. 1 to 7 and also the objection filed by the petitioner against the said maintainability application meticulously. After perusal of all those application I come to the conclusion that the petitioner is a ranked trespasser and has no right or locus standi to challenge the Judgement and Decree passed in Ejectment Suit No. 58 of 2007 and the execution proceeding initiated by the Decree Holders. The instant Misc. Case filed by the petitioner deserves no merit and should be rejected in limini. The instant Misc. Case is the glaring example of the abuse of the process of law and it has been filed only to drag the execution proceeding.

Therefore, in the light of the above discussion and the decisions cited by the petitioner and also decree holders/ opposite parties this court comes to the conclusion that the instant Misc. Case is not maintainable, the petitioner was stranger/unauthorized occupier and they have no right/locus standi to file the above Misc. Case. Balahari Mondal and Swadesh Ranjan Das @ Bhaskar Das and Jolly Das, had no right to issue any rent receipt in favour of the petitioner in respect of premises no. 62, Alipore Road (since 1964 there is no existence of 62, Alipore Road). Balahari himself was a yearly tenant that has been finally decided by the Hon'ble Division Bench of Calcutta High Court in Appeal from Original Decree No. 211 of 1949, the impugned receipts

issued by Balahari Mondal, Dulal and Swadesh Ranjan Das @ Bhaskar Das are not valid receipts and those are not binding on the decree holders/opposite parties. It is a well known maxim that *Nemo dat quod non habet* means no one can transfer a better title in property than he himself has. So, the petitioner never acquired any tenancy in any portion of premises no. 62, Alipore Road. On the basis of the purported rent receipts.

I have gone through all the decision cited by the Ld. Advocate of the petitioner reported in :-

- 1) (2004) 1 SCC 769 Rama Gowda –vs- M. Varadappa Naidu & Anr.
- 2) (1975) 4 SCC 518 Puran Singh & Others –vs- State of Punjab
- 3) (1997) 3 SCC 694 Brahmdeo Chaudhary –vs- Rishikesh Prasad Jaiswal & Anr.
- 4) (1989) 4 SCC 131 Krishna Ram Mahale –vs- Shobha Venkat Rao
- 5) (1996) 4 SCC 144 Samir Sobhan Sanyal –vs- Track Trade Private Ltd & Others

But I find that the facts of the present Misc. Case under order 21 rule 99 to 101 read with Section – 47 and 151 of the Civil Procedure Code, 1908 are entirely different from that of the facts mentioned in those reported decisions cited by the petitioner.

The opposite parties/ decree holders have cited the following reported decisions in support of their statements, contentions and argument made in the Maintainability petition, those decisions are:-

- 1) AIR 1952 CAL 380 Abel Hashem –vs- Balohari Mandal
- 2) (1998) 3 SCC 723 Silverline Forum Pvt. Ltd. –vs- Rajiv Trust & Anothers
- 3) (2012) 5 SCC 370 Maria Margarida Sequeira Fernandes –vs- Erasmo Jack De Sequeira (Dead) through LRS.

I have gone through those decisions and I find that those decisions are verily applicable to the instant Misc. Case. The decision reported in AIR 1952 CAL 380 Abel Hashem –vs- Balohari Mandal is directly connected with the decretal properties.

In view of the Judgment cited above in Maria Margarida Sequeira Fernandes –vs- Erasmo Jack De Sequeira (Dead) through LRS, it has been held that, the protection of the court can only be granted or extended to the person who has valid, subsisting rent agreement, lease agreement or License agreement in his favour. In the instant Misc. Case the petitioner has stated or mentioned in their petition that their predecessor was inducted by Balohari Mandal, Dulal Das and lastly by Swadesh Ranjan Das @ Bhaskar Das and Jolly Das and rent receipt were issued by them in different time. Balohari Mandal, Dulal Das and lastly by Swadesh Ranjan Das @ Bhaskar Das and Jolly Das were neither the owner nor the land lord of the property involved in this Misc. Case. It has already been held that Balohari Mandal himself was a yearly tenant so he has no authority to issue the impugned rent receipt. On the basis of those alleged rent receipts by those persons no valid tenancy can be created. If a tenant claim a valid tenancy in a Court, the burden lies on him to prove that the receipts were genuinely issued by the landlord or someone authorized by the landlord. If a tenant makes a payment to an unauthorized third party and

obtain receipt, that document cannot be used against the actual landlord to claim tenancy right. A tenancy is a contract between the landlord and a tenant. A third party cannot unilaterally issue a receipt that creates legal obligations or liability for the landlord. So the petitioner is bound by the decree that was passed against the original tenant K.G. Mandal.

After finishing the arguments of both sides on the petition as to the maintainability of the above Misc. Case filed by the opposite party no. 1 to 7 the petitioner has filled certain Xerox documents by firisti after serving copy to the opposite parties. I find none of the documents are relevant for the purpose of disposing of the application as to the maintainability of the above Misc. Case.

In the above-mentioned fact and circumstance as stated above and discussion this court comes to the conclusion that the petition u/s 151 of the Civil Procedure Code, 1908 filed by the opposite parties no. 1 to 7/ decree holders is allowed on contest.

Hence it is,

ORDERED

*that the petition/ application under section 151 of the Code of Civil Procedure, 1908 filed by the decree holders/ opposite parties no. 1 to 7 as to the maintainability of the above Misc. Case is allowed on contest and as a consequence the injunction application and application under order 21 rule 99 to 101 read with section – 47 and 151 of Code of Civil Procedure, 1908 is **rejected** on contest without any cost.*

The Misc. Case is, thus disposed of on contest.

Note in the relevant register.

D/C by me,

Sd/-

CJ(Jr. Divn.), 2nd Court, Alipore

South 24 Parganas

Sd/-

CJ(Jr. Divn.), 2nd Court, Alipore

South 24 Parganas