

Misc. Case No. 55 of 2025
CIS No. WBPS01-000170-2025
(Under Order 21 Rule 97 r/w Section 151 of the CPC and under Rule 208 of C.R.O.)

Order No. 38
07.08.2026

Today is fixed for awaiting A/D and consideration of service report.

Petitioner is present by filing hazira.

The substituted opposite party being the sons of the deceased judgment debtor entered appearance this day by filing separate vokalatnamas.

One of the substituted opposite party namely Amit Shaw is already a party in this suit as resister. This day opposite party no. 2 Sanjay Shaw filed an application praying for adjournment as he intends to file written objection in the instant case.

Ld. Advocate for the petitioner objected such prayer of the opposite party no. 2.

On the other hand, the contention of the opposite party no. 2 is that he is one of the sons of the deceased opposite party and he has been substituted in place of his deceased father and he has the right to file the written objection.

Upon perusal of the record, it appears that the instant Misc. Case under order-21, rule-97 read with Rule 208 of the C.R.O. was filed by the petitioner / decree holder against the judgment debtor Bhola Nath Shaw, the judgment debtor and Amit Shaw, the resister and both of them filed a joint written objection upon entering appearance in the suit. The evidence of the PW1 has already been closed and PW-2 being the Seal Bailiff was being cross-examined when the judgment debtor expired and accordingly the present opposite parties were substituted in place of the deceased. Now after entering appearance the opposite party no. 2 Sanjay Shaw submits that he intends to file the written objection.

At this junction it is pertinent to refer the provision of Section 50(1) of the CPC which enunciates that after the death of the judgment debtor, his legal representatives can be called upon to execute the decree which the decree holder applies to the Court to be executed before it has been fully satisfied by the judgment debtor.

Where a judgment-debtor dies before the decree has been fully satisfied, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

Section 50 (2) of the CPC specifically states that the legal representative against whom the decree is executed is only liable to the extent of the property or asset acquired by him on the death of judgment debtor or which has come to his hands.

The legal representatives upon being substituted steps directly into the shoes of the judgment debtor and they are legally bound by any admission or defence, right raised and waived by the original judgment debtor. In the

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instant case the decree passed is in respect of the delivery of the vacant possession of the decretal premises i.e. the tenanted premises. The misc case is for police assistance which is an ancillary enforcement mechanism to prevent the obstruction of justice. Since the bailiff of the court was obstructed in execution of the writ of possession, the application has been filed by the decree holder seeking police aid. The bailiff is said to have been resisted by the resistor, i.e. opposite party no.1 and the judgment debtor was absent at that time. Both of them have already submitted their joint written objection against the said allegation hence the substituted opposite party no.2 cannot file a fresh written objection to alter the contention of the written objection or add something new further. Moreover the opposite party no.1 being the other son is already on record contesting the case. If the substituted opposite party no.2 /judgment debtor has any personal or independent claim or right to the decretal property i.e. not deriving from his deceased father then he can file a proper application.

In view of the above, the opposite party no. 2 will have no right to file a fresh written objection as a substituted opposite party. Accordingly, the case is adjourned this day fixing next date for cross-examination of PW-2.

Fixing 26.08.2026 for fixing cross-examination of PW-2.

Dictated and corrected by me:

Judge

Gladys Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta