

**<sup>1</sup>Misc. Case No. 68 of 2025**  
**CIS No. WBPS01-000203-2025**  
**[Under Order 21, Rule 101 r/w Section of the CPC].**

**Order No. 53**  
**10.12.2025**

Today is fixed for passing order in respect of the application filed by the petitioner Under Order – 21, Rule 26 of the CPC.

Opposite party has already filed his written objection to the said application.

I have already heard the parties in respect of the application as above. The record is taken up for passing order.

The instant application has been filed by the petitioner Ajit Ghosh Roy claiming that he is a tenant along with his daughter in respect of two rooms being nos. 8 & 9 at a monthly rent of Rs. 200/- each per room from February, 2005 under the landlord Raj Kumar Gupta, Constituted Attorney of the original owners who are the residents of Varanasi, Uttar Pradesh. It is further submitted that they have been carrying on wooden furniture manufacturing business at the decretal premises under the name and style “INDIA FURNISHING STORES” having the trade license issued by the Kolkata Municipal Corporation.

It is submitted that Raj Kumar Gupta, the landlord of the petitioner who expired on 12.12.2024 was the Constituted Attorney of the original owners Kanhaiyalal Poddar and Gopal Chand Sharma who had obtained probate of WILL dated 17.08.1971 executed by the original owner of the suit premises namely Ram Dulari Poddar, wife of Late Seth Sagamull Poddar from the Ld. District Judge at Varanasi, Uttar Pradesh in the year 2000. The said Ram Dulari Poddar died on 12.09.1971. The said owners through their Constituted Attorney had filed a Title Suit No. 3549 of 1994 against the decree holder herein, Purusottam Das Poddar being defendant no. 1 with other defendants therein but the said suit was dismissed for default and thereafter the Misc. Case No. 831 of 2015 Under order 9 Rule 9 of the CPC has been filed by the substituted plaintiffs and the same is pending before the Ld. Judge, 2<sup>nd</sup> Bench, City Civil Court at Calcutta. The decree holder also has filed a Title Suit No. 1677 of 2004 against the owners and the power of attorney holder which is also pending before the Ld. Judge, 13<sup>th</sup> Bench, City Civil Court, Calcutta.

It is submitted that the decree dated 17.02.2017 passed by this Court in Ej. Suit No. 268 of 2006 is not enforceable and executable and the Misc. Case No. 47 of 2005 under order 21, Rule-97 r/w Section 208 of CRO is not enforceable nor executable and prays that the proceeding be stayed till the disposal of the instant Misc. Case.

On the other hand, the opposite party contended that the petitioner is an illegal and unauthorised sub-tenant inducted by the judgment debtor, Smt. Madhumita Bhattacharjee in respect of the decretal premises and he has no manner of independent right to remain in possession of the decretal premises. It is further contended that the petition has been filed on false and frivolous grounds on the basis of fabricated documents. It is submitted that Ramesh Kumar Gupta was the erstwhile tenant of the premises in question who was evicted by the opposite party following the due process of law and he has no manner of right or authority either as landlord or the Constituted

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Attorney of the alleged owners to induct the petitioner or his daughter as tenants in the decretal premises. It is further contended that Baidyanath Bhattacharjee, since deceased was the father of the judgment debtor who was a monthly tenant under the opposite party in respect of the decretal premises and upon his death the opposite party filed an eviction suit against his only daughter Madhumita Bhattacharjee and one of the grounds for eviction was illegal subletting of the decretal premises to the petitioner and the said issue had been decided in positive, decreeing the suit in favour of the opposite party.

The opposite party further claims that Ram Dulari Poddar was never the wife of Sagarmul Poddar neither the owner of the property in question, and, such, Kanaiyalal Poddar and Gopal Chand Sharma could not have acquired any manner of right or title in respect of the property in question. The allegation made therein are vague and lacks substance. It is further contended that Mathura Prosad Poddar, father of the opposite party by virtue of the decree passed in Suit No. 472 of 1964 by the Hon'ble High Court at Calcutta was declared as the sole owner of the properties mentioned in the said suit including premises no. 13/4, Siddheswar Chandra Lane, Kolkata – 700012 and on demise of Sagarmul Poddar and Ram Dulari Poddar was declared a kept of said Sagarmul Poddar and the purported deed of gift allegedly executed by said Sagarmul Poddar on 17.01.1942 in favour of Ram Dulari Poddar and the Deed of Adoption dated 08.01.1959 allegedly executed in favour of second adopted son Kanaiyalal Poddar were all declared and cancelled as void. In the event thus, Ram Dulari Poddar being the owner and landlord of premises no. 13/4, Siddheswar Lane and Kanaiyalal Poddar and Gopal Chand Sharma since deceased or her heirs as joint owners and landlords does not arise.

The opposite party stated that the petitioner is an illegal sub-tenant inducted by the judgment debtor. It is further stated that the Misc. Case No. 831 of 2015 for restoration of the T.S. No. 3540 of 1994 has also been dismissed on 20.08.2025. The Title Suit No. 1677 of 2004 against Kanaiyalal Poddar, Gopal Chand Sharma and their alleged Constituted Attorney Raj Kumar Gupta is pending before the City Civil Court at Calcutta wherein the opposite party has prayed for an order of injunction restraining the defendant from claiming ownership, collecting rent from the tenants and from interfering with the possession of the tenants at the decretal premises which is pending for disposal.

It is submitted that petitioner being the sub-tenant under the judgment debtor, the decree passed on 17.02.2017 is binding upon him and he should be evicted from the decretal premises. Thus, prays for rejection of the application under Order – 21, Rule 26 of the CPC.

Upon hearing submission of the respective parties and the perusal of the petitions and the entire case record, it appears that the Ejectment suit 268 of 2006 had been decreed in favour of the opposite party/decreed holder against the judgment debtor Madhumita Bhattacharjee in respect of the decretal premises. One of the grounds of eviction as pleaded by the opposite party was the sub-letting of the suit premises by the judgment debtor in favour of one named Ajit Ghosh Roy who is the petitioner herein. The issue of sub letting had been decided in favour of the plaintiff holding that the

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judgment debtor illegally sub let the decretal premises to the present petitioner. In the ejectment suit, the judgment debtor had also contended that the plaintiff is neither the owner nor the landlord hence, while adjudicating the landlord tenant relationship, the court had even considered the ownership of the plaintiff/landlord in respect of the suit premises holding the plaintiff, the owner cum landlord of the decretal premises, in the light of the decree passed by the Hon'ble High Court at Calcutta in Suit No. 472 of 1964 declaring Mathura Prasad Poddar, father of the opposite party as the sole owner of the suit premises. The petitioner herein has claimed to be the tenant inducted at the decretal premises by Raj Kumar Gupta, the Constituted Attorney of Kanhaiyalal Poddar and Gopal Chand Sharma, who he claims to be the original owners cum landlords of the decretal premises but fact remains that in Suit No. 472 of 1964, the Hon'ble High Court has already declared Mathura Prasad Poddar, father of the opposite party as the sole owner of the suit premises and the said order is still in force. Hence the Petitioner being inducted in the decretal premises by the alleged constituted attorney of the alleged owners of the decretal premises does not hold much of a stand in view of the existence of the order of the Hon'ble High Court in Suit No. 472 of 1964.

In view of the above, I do not find any valid grounds for staying the proceeding of the execution case pertaining to the decree dated 17.02.2017 passed by this Court in Ej. Suit No. 268 of 2006 and the connected miscellaneous proceeding seeking police help to execute the said decree.

Accordingly the application Under Order – 21, Rule 26 of the CPC filed by the petitioner is rejected on contest.

To **17.01.2026** for hearing of the case.

Dictated and corrected by me:

*Judge*

**Glady Bomjan**  
**(J.O. Code: 01039)**  
**Judge, 3<sup>rd</sup> Bench**  
**Presidency Small Cause Court,**  
**Calcutta**