

EJECTMENT SUIT NO. 391 OF 2013 [5778/2014]
C. N. R. NO. WBPS01- 000451 - 2013
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 81 DATED 03.09.2025

Both parties file hazira.

Written objection is filed on behalf of the defendant against the application under Or.6 R.17 read with Sec.151 of C.P.C. filed by the plaintiffs. Copy served. Let the same be kept with the record.

Today is fixed for payment of cost of Rs.1000/- by the defendant and hearing of the petitions filed by the plaintiffs.

The record is taken up for hearing of the petition under Or.22 R.10 read with Sec.151 of C.P.C. filed by the plaintiff no.2 by filing which it is submitted by the Id. Advocate for the plaintiffs that Gour Charan Mullick and Avijit Mullick were appointed as Joint Receivers in Suit No.613/1992 and filed the aforesaid suit against the defendant praying for a decree for recovery of khas possession in respect of the suit premises. During pendency of the aforesaid suit, Gour Charan Mullick, one of the joint Receivers died and in his place, Sri Goutam Mullick has been appointed as joint Receiver with the plaintiff no.2 vide order dated 20.04.2023 passed in the suit No.613/1992. And, as such, submits that the name of Gour Charan Mullick from the cause title of the plaint be deleted and in his place, the name of Goutam Mullick be incorporated.

On the other hand, though no written objection is filed by the defendant but it is submitted by the Id. Advocate for the defendant that the petitioner has got no locus standi to file the instant application. The instant petition ought to have been filed by Goutam Mullick but the same has been filed by Avijit Mullick and as such, the instant petition should be rejected in limini.

Considering the submissions of Id. Advocates for both sides, the petition and the materials on record, it appears that Gour Charan Mullick, one of the Joint Receivers died and in his place, his son Goutam Mullick has been appointed as Joint Receiver by Hon'ble High Court at Calcutta in connection with I.A.No.G.A. 09 of 2023 in Partition and Administration Suit No.613 of 1992. From the order dated 20.03.2023, it also appears that the subject matter of the said suit is the Estate of Indra Mohan Mullick, since deceased, and parties thereof are his legal heirs. The Joint Receivers are also amongst the legal heirs of Late Indra Mohan Mullick. The petitioner is one of the Joint Receivers and one of the Co-owners of the suit property. He has every locus standi to seek inclusion of the other Joint Receiver so appointed by Hon'ble High Court at Calcutta. There is no bar to the existing Receiver from filing an application for inclusion of other Joint Receiver in the cause title of the suit. There is no apparent necessity or mandate upon the intending JointReceiver to file application

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seeking his inclusion in the suit and as such, there is bar to allow the instant petitioner and the prayer of the plaintiff no.2.

Hence, it is

ORDERED

that the petition under Or.22 R.10 read with Sec.151 of C.P.C. filed by the plaintiff no.2 is allowed on contest.

Let the name of Gour Charan Mullick, one of the Joint Receivers be deleted from the cause title of the plaint and the name of his son, Goutam Mullick be incorporated as Plaintiff no.1 in his place.

Plaintiffs are directed to file amended copy of plaint within 14 days from the date of this order after service of copy of the same upon the defendant.

Now, the record is taken up for hearing of the petition under Or.6 R.17 read with Sec.151 of C.P.C. filed by the plaintiffs by filing which it is submitted by the ld. Advocate for the plaintiffs that the instant suit has been filed for recovery of khas possessin in respect of the suit premises on the grounds of default, reasonable requirement and costs etc. During pendency of the aforesaid suit, plaintiffs have recovered possession in respect of two rooms and one flat on the second floor of premises no.54A, Strand Road, P.S. Jorabagan, Kolkata-700006 which was under occupation of Smt. Rani Tiwari and another by way of execution of decree. Plaintiffs intend to incorporate the aforesaid facts in the plaint of the aforesaid suit as per schedule of proposed amendment by way of amendment.

On the other hand, by way of filing written objection, it is submitted by the ld. Advocate for the defendant that the application is not maintainable for the reason that the suit has been filed by Gour Charan Mullick and Sri Avijit Mullick as joint Receivers appointed by Hon'ble High Court at Calcutta but the instant application has been filed in the individual capacity and not as an Receiver and as such, this is not maintainable. That vide order dated 20.04.2023, Hon'ble High Court at Calcutta has been pleased to appoont Goutam Mallick and Avijit Mallick as joint Receivers to administer the Estate of late Indra Mohan Mallick. Plaintiffs admitted in the month of January 2017 got possession of the first floor of premises no.54A, Strand Road, Kolkata-700006 measuring 1740 sq. ft. On the first floor and 540 sq.ft. on the mezzanine floor totalling 2280 sq. ft. Regarding premises no.54A, Strand Road, Kolkata-700006 consisting of eight rooms. Plaintiffs, after getting possession thereto, made massive addition and alteration and construction over the said flat to let out the same to a cloth merchant on receing huge selami. The entire first floor and mezzanine floor are lying vacant. Besides that, plaintiffs also got possession of another room on the ground floor from the previous tenant and let out the same to the third party during the pendency of the suit since the plaintiffs have no requirement. Plaintiffs

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also recovered possession in respect of the entire second floor of premises no.54A, Strand Road, Kolkata – 700006 from the tenants of the second floor and the second floor is remaining vacant and under the custody of the plaintiffs which has not been disclosed by the plaintiffs in this application. Besides that, the roof is lying vacant and inspection is being given to the respective parties. Plaintiffs have filed the petition in personal capacity and not in capacity of Receiver. Plaintiffs have no locus standi to file this application. Entire premises have not been incorporated in the amendment petition and prays for rejection of the said application filed by the plaintiffs.

Perused the petition, the written objection and the materials on record.

Heard ld. Advocates for both sides.

Considering the petition, written objection and the materials on record, I find that the amendment sought for by the plaintiffs are formal in nature and for proper and effective adjudication of the instant suit, the amendment prayed for should be allowed and the facts as mentioned in the instant petition should be brought on record. Avijit Mullick who has filed the instant petition is one of the Joint Receivers and Co-owners of the suit property. It is not substantiated as to how his locus standi to file the instant application has been challenged by the defendant. The petitioner although has filed this petition in his personal capacity and not in the capacity of Receiver but it is an admitted fact that he is managing the Estate as one of the Receivers but is also one of the co-owners of the suit premises. Thus, he has every authority to file application in either of the capacities. That apart, whether the entire premises has been incorporated or not is a matter of trial to be decided after taking evidence. This court cannot hold mini trial on this question while disposing of an interlocutory application. The amendment sought for is thus a necessary one.

Hence, it is

ORDERED

that the petition under Or.6 R.17 read with Sec.151 of C.P.C. filed by the plaintiffs dated 10.12.2024 is allowed on contest.

Plaintiffs are directed to file amended copy of plaint.

Defendant is at liberty to file additional written statement, if any.

Now, on careful perusal of the case record, it appears from the order dated 30.07.2025 passed by Hon'ble High Court at Calcutta in C.O. No.3879 of 2022 [CAN 1 of 2024] that **“The availability of the premises with the landlord is a necessary fact which is to be brought on record. The Court considers that the report**

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of the commissioner, so appointed will help in better adjudication of the dispute as it would be difficult for the petitioner/tenant to bring on record the extent/status of the opposite party/landlord at his disposal. Needless to say that such commissioner report is required to be proved in accordance with law.

The Court considers that the impugned order is unsustainable in law. Hence, the petition is allowed. Order dated 29th November 2022 is set aside.

It has been informed that during the course, that after the impugned order the opposite party/landlord had moved an application for amendment and some new facts have also come on the record.

Let the Court appoint a commissioner to call for a report on the entire pleadings, including amended, as available on the record.

The cost of the commissioner shall be borne by the petitioner/defendant.

Learned Trial Court is further directed to expedite the matter and conclude within six months in accordance with law.”

Having wisdom of the judgment passed by the Hon’ble High Court at Calcutta passed in C.O.No. 3879 of 2022, I am inclined to hold that let an Advocate Commissioner be appointed to hold local inspection in respect of premises no.54A, Strand Road, Kolkata-700006.

Let **Shri TARUN BASU**, Ld. Advocate of the Local Bar be appointed as an Advocate Commissioner to hold local inspection of the premises no. 54A, Strand Road, Kolkata-700006 after service of notice upon both parties to this suit and their respective ld. Advocates and to submit a report thereof.

Defendant is directed to pay a sum of Rs.10000/- to the ld. Advocate Commissioner within seven(7) days from the date of this order positively.

Writ of Commission will be issued after filing receipt showing payment of cost by the defendant.

Fix 17.09.2025 for filing amended plaint. Additional Written Statement by the defendant, if any.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]