

EJ. EXECUTION CASE NO. 169 OF 2023
C. N. R. NO. WBPS01- 000772 - 2023
Before Smt. A. Bhattacharya, Ld. Judge, 5th Bench.

ORDER NO. 17 DATED 09.12.2024

Both parties file hazira.

Today is fixed for passing order in respect of petition dated 27.09.2024.

The record is taken up for passing order.

By filing the petition under Sec.151 of C.P.C. dated 27.09.2024, it is stated by the Composite Decreeholder/defendant that in connection with the Ejectment Suit No.467 of 1988, a composite decree is passed under Sec.13(1)(f) of the W. B. P. T. Act on 23.11.2007 as per observation and guideline of C.A. No.1829/2007. In terms of the said decree, plaintiff/decreeholder got possession of the decretal room on 03.04.2017 through court in connection with Ex. Case No.81/2008 and other tenanted rooms from time to time. In the said decree, it has been directed to the plaintiff to put back possession to the tenants/defendants/composite decreeholder in the reconstructed building within one year from the date of delivery of possession. Plaintiff/decreeholder started to make new construction and after constructing new building, intentionally and deliberately avoided to complete the decretal room and to put back the same to the respective tenants even after waiting 6 years 8 months thereby disobeyed the order of Hon'ble Apex Court. Defendant/composite decreeholder duly took steps for execution of the decree and accordingly, 27.09.2024 was fixed for delivery of possession through court bailiff. Plaintiff is liable to be punished by paying a sum of Rs.3000/- per day to the defendant/composite decreeholder for non compliance of order of Hon'ble Apex Court. Defendant is ready to make/raise brick wall taking loan from the market for raising wall for the said decretal room with finished condition, which the plaintiff is mischievously ignoring but it is very urgent and bona fide and for such consequence, police help is required and prays for restoring possession of the decretal room and also permitting the defendant/composite decreeholder to raise brick wall with its finished and habitable condition with electricity and as such, prayed for direction upon the plaintiff/composite decreeholder to restore possession of the decretal room on the ground floor as per Plan annexed with the decree in terms of the decree dated 23.11.2017 within 30 days and other reliefs.

On the other hand, though no written objection is filed by the decreeholder/plaintiff but it has been submitted by the Id. Advocate for the decreeholder that he has strong objection so far as the prayer of the instant petition is concerned. It is categorically submitted by the Id. Advocate for the decreeholder/plaintiff that the instant petition is misconceived one and the prayer of the composite decreeholder/defendant is vexatious and not maintainable in

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the eye of law and should be rejected in limini.

On careful perusal of the case record, it transpires that a composite decree was passed by Id. 4th Bench, City Civil Court at Calcutta in Ejectment Suit No.467/1988 whereby Id. Court directed the Plaintiff to put the tenants back into possession in the reconstructed building within one year from the date of delivery of possession by the tenants to the plaintiff. This decree was passed in terms of the directions passed by Hon'ble Apex Court in Civil Appeal No.1829/2007. Subsequently, one Revisional Application was filed by the defendant of the original suit being C.O. No. 101/2021 where the Hon'ble High Court at Calcutta has observed that **“In this context it is to be made clear that though the petitioner has taken a plea of maintainability of filing such application before court below stating that under Sec.18A, such execution proceeding lies before controller after completion of building/rebuilding work and execution proceeding before court below is not maintainable, but in my considered opinion, such plea is dubious in nature since petitioner himself alleged that the application before court below is premature. Judgment of the Apex Court was passed as per the provision of Section 13(1)(f) of the Act of 1956 and the trial court was directed to pass decree and consequential orders in terms of Section 18A of the Act. The petitioner herein even obtained possession from tenant/opposite party by executing the decree before trial court, now he cannot take the plea that defendant/tenant cannot get back possession by executing the same decree from the court below. He must not be allowed to blow up hot and cold at the same time. Moreover executing court rightly observed that it is not an independent application under Section 18A of the Act of 1956 for restoration of possession after decree and reconstruction which is required to be filed before concerned rent controller but the decree has been passed by court below in terms of judgment and directions passed by the Apex Court and as such execution proceeding is very much maintainable before the court below”**.

Thus, the Jdr. is well justified to file the instant Execution proceeding.

Ld. Advocate for the plaintiff/decreeholder had raised one question regarding fixation of fair rent and submitted that the defendant/Jdr. has not yet come to any agreement with regard to the fair rent payable in respect of the decretal property.

Sec.18A(3) of The W. B. P. T. Act 1956 emphasizes the liability of a tenant to pay fair rent in respect of such premises or such part thereof from the date of delivery of such possession.

The question of fixation of fair rent was never raised before the Hon'ble Apex Court or before the Hon'ble High Court at Calcutta or before the Id. City Civil Court, Calcutta. The power to fix fair rent is vested with the Rent Controller as per the statute and also in terms of Sec.18A(3) of the said Act.

In view of the direction passed by Hon'ble Apex Court as well as Hon'ble High Courtl at Calcutta, this court is bound to hold that the plaintiff/decreeholder is to comply with the decree passed by the Id. 4th Bench, City Civil Court, Calcutta and put the tenants back in possession in the reconstructed building within one year from the date of delivery of possession by the tenants.

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In such circumstances, the plaintiff/decreeholder is directed to complete the construction of the decretal suit shop room within the next date fixed and submit a report to that effect before this Court on the next date fixed.

Accordingly, the petition dated 27.09.2024 filed by the defendant/judgment debtor stands disposed of but without cost.

Fix 07.03.2025 for filing report by the plaintiff/decreeholder.

Dictated and corrected by me,

JUDGE

JUDGE
[5TH BENCH]