

**Misc. Case No. 241 of 2018**  
**CIS No. WBPS01-001089-2018**  
**(Under Section 47 of the C.P.C.)**

**Order No. 90**  
**04.12.2025**

Today is fixed for passing order in respect of the application filed by the petitioner/defendant u/s 379 of the BNSS.

Parties have filed their respective haziras.

The record is taken up for passing order.

The instant application is filed by the petitioner/defendant submitting that the opposite party/plaintiff filed an Ej. Suit No. 333 of 2010 against the petitioner/defendant by making false allegations and on the basis of forged and manufactured documents and swearing false affidavit whereby showed the petitioner/defendant as the tenant in respect of the premises no. 44C, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 despite having knowledge that the petitioner/defendant namely Gopal Saha is a Thika Tenant in respect of the premises no. 44B/1, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 and Govt. of West Bengal is the landowner of the said premises, but the opposite party / plaintiff deliberately inserted the schedule of premises no. 44B/1, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 with the intention to evict the thika tenant from the premises at 44B, Sovabazar Street, Kolkata – 700005. It is contended by the petitioner/defendant that he has submitted several documents including the certificate of the Thika Controller showing that the premises no. 44B/1, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 (formed out of 44, Sovabazar Street, Kolkata – 700005) is a thika tenancy property.

It is alleged that the opposite party / plaintiff gave false evidence on oath in Ej. Suit No. 333/2010 thereby committing offence under Section 299 of the BNS and is liable to a proceeding under Section 379 of the BNSS, accordingly, prays for drawing up a proceeding against the opposite party / plaintiff under the appropriate provision of law.

On the other hand, the opposite party / plaintiff submitted his written objection denying giving any false evidence and committing any offence thereof. It is contended that the executing court cannot go beyond the decree passed and cannot exercise its jurisdiction in setting aside the decree passed by this Court. Moresoever, when the petitioner/defendant has already preferred a Title Appeal no. 86 of 2017 which is pending before the Ld. Judge, 4<sup>th</sup> Bench, City Civil Court, Calcutta.

It is submitted that the petitioner/defendant was contesting the ejectment suit and had filed a petition under Order-7, Rule-11(d) of the CPC for rejection of the plaint on the ground that the property is a thika property which was rejected by this Court and being aggrieved by the said order the petitioner/defendant preferred the revision and the application was registered as C.O. No. 638 of 2015. The Hon'ble High Court, Calcutta vide order dated 13.10.2015 rejected the revisional application thereby affirming the order of this Court and had also been pleased to observe that the suit property is not a vacant plot but a structure is also there. Despite that the petitioner is filing frivolous applications one after another instead of

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challenging the said order of the Hon'ble High Court. It is further contended that the petitioner has no right to challenge the ownership of the landlord and the petitioner/defendant is the tenant in respect of the premises no. 44C, Sovabazar Street, Kolkata – 700005 and he never challenged the schedule in his written statement, rather filed application that the premises no. 44C, Sovabazar Street, Kolkata – 700005 is a thika property. Thus prays for rejection of the application.

**At the very outset, it seems necessary to reproduce the provision of Section 379 of the BNSS for the purpose of understanding the case in hand, which reads is as follows :**

**379. Procedure in cases mentioned in section 215.**

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 215, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,---

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215.

(3) A complaint made under this section shall be signed,---

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

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(4) In this section, "Court" has the same meaning as in section 215.

The bare reading of the Section 379 BNSS states that it lays down the procedure for a court to take action when someone has committed offence of giving false evidence, forging documents used in court or used forged documents in court in relation to a court proceeding or a document used in the court proceeding and the court has to be satisfied that it is expedient in the interest of justice to enquire into the matter.

The petitioner/ defendant has alleged the opposite party/ plaintiff of giving false evidence in the ejectment suit on affidavit claiming the thika property as his ownership property and showing the petitioner/defendant as the tenant of the premises 44C, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 (suit premises) despite having knowledge that the petitioner/defendant namely Gopal Saha is a Thika Tenant in respect of the premises no. 44B/1, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005 and Govt. of West Bengal is the landowner of the said premises.

The Hon'ble Supreme Court of India has taken note of the paragraph 23 of the Constitutional Bench decision in **Iqbal Singh Marwah vs. Meenakshi Marwah, (2005) 4 SCC 370** which is extracted hereunder:

“In view of the language used in Section 340 Cr. P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195 (1) \*b), as the Section is conditioned by the words “Court is of opinion that it is expedient in the interest of justice.” This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offences referred to in Section 195 (I) (b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged documents, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that forged document or forgery may cause a very serious or substantial injury to a person.

Upon perusal of the record, it appears that the opposite party/plaintiff filed a suit for eviction for recovery of khas possession against the petitioner/defendant which was registered as Ej. Suit No. 333 of 2010 and was eventually decreed exparte on 11.07.2017. Thereafter, to execute the decree, the Execution Case No. 200 of 2017 was filed by the opposite party/plaintiff. In the meantime, an application u/s 47 read with order 21, Rule – 99 to 101 of the CPC was filed by the petitioner/defendant against the opposite party/plaintiff wherein the evidence of OPW-1 is already concluded and closed vide order dated 06.11.2024 and the case is fixed for argument. Thereafter the instant application was filed by the petitioner/defendant. The decree has been passed in respect of the premises no. 44C, Sovabazar Street, Kolkata – 700005 and defendant claims to be the Thika Tenant in respect of the premises no. 44B/1, Sovabazar Street, P.S. - Jorabagan, Kolkata – 700005.

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From the oral submission made by the parties and the materials on record, it can not be said that the premises no. 44C ( suit premises) and the premises no. 44B/1 (premises of which the petitioner/defendant claims to be the tenant) is one and the same. Presumably, the premises are different and had that been the case, why did the petitioner/defendant entered appearance in the suit and why did he chose to initially contest the suit, if the suit property being premises no.44 C did not concern him at all and why didn't he raise the matter in the trial court. His claim of the property being the thika property had also been rejected, then what prevented him approaching the higher forum against the said order. He contested the suit on his own accord and chose to leave the suit uncontested in the midway and as such the ex parte order was passed. He has already preferred the title appeal against the said decree and the matter is sub judice before the Ld. Judge, 4<sup>th</sup> Bench, City Civil Court, Calcutta. At the same time he has also filed an application under Section 47 read with Order 21 Rule 99 to 100 of the CPC has also been filed against the said decree passed ex parte.

Section 379 of the BNSS does not a mandate of preliminary enquiry and such a course may not be required to be adopted in every cases. However, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offence referred to in Section 215(1)(b) of the BNSS. However, it is not in all and every case, the Court has to exercise the jurisdiction under Section 379 of BNSS unless there is an expediency in the interest of the justice in the opinion of the Court. In this case, I do not find such expediency in the matter and the petition filed under Section 379 of BNSS does not persuade this court to direct to conduct a preliminary enquiry or to direct institution of a complaint against the opposite party/ plaintiff for the reason discussed above.

In view of the above, the application under Section 379 of the BNSS is hereby rejected on contest as devoid of merit.

Fixing **06.01.2026** for hearing of the application for recall of the OPW-2.

**Dictated and corrected by me:**

***Judge***

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