

OD-38

**IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE**

Present:**The Hon'ble Justice Ananya Bandyopadhyay**

**EC/14/2026
A.K.R.CONSULTANTS (P) LTD. AND ORS
VS
ASHA KESRI ALIAS ASHA KESHRI AND ORS**

For the Decree Holder : Mr. Dipankar More, Adv.

Judgment on : 10.08.2026

Ananya Bandyopadhyay, J.:-

1. The decree-holders have taken out the present application for execution of the judgment and decree dated 14th November, 2025, passed in the suit, principally seeking delivery of possession of the open unenclosed area abutting Armenian Street at the north-eastern portion of premises No. 12, Armenian Street, Kolkata, more fully delineated and marked in pink hatch in the map/plan annexed to the plaint and forming part of the decree, against defendant Nos. 5(a), 5(b) and 5(c), who are the judgment-debtors in the present execution.
2. The litigation has had a considerable history. The original defendant No. 5 died on or about 23rd December, 2008, whereafter his heirs were substituted as defendant Nos. 5(a), 5(b) and 5(c). The decree dated 14th November, 2025 came to be passed upon the application for judgment

upon admission, whereby the Learned Trial Court directed eviction of the substituted defendants from the aforesaid portion of the premises.

3. The judgment-debtors thereafter carried the matter in appeal. APDT/12/2026, together with the connected applications, was decided by the Hon'ble Division Bench of this Court. By judgment delivered on 19th May, 2026, the appeal was dismissed and the judgment and decree under execution were sustained.
4. The decree has, therefore, passed through the appellate stage. There is no order placed before this Court suspending its operation or restraining its execution.
5. The decree-holders have placed on record an affidavit of service. The materials disclose that the judgment and decree were communicated to the Advocate representing the substituted defendants by letters dated 19th February, 2026, 26th February, 2026 and 2nd March, 2026, with a request to hand over vacant and peaceful possession in compliance with the decree.
6. It further appears from the materials placed before the Court that, by communication dated 20th March, 2026, defendant No. 5(a), for himself and the other judgment-debtors, declined to acknowledge service of the decree and refused to vacate and deliver possession.
7. The present execution application has been instituted within two years from the date of the decree. The particular contingency contemplated by Order XXI Rule 22(1)(a) of the Code of Civil Procedure, 1908, namely an execution application made more than two years after the date of the decree, is consequently absent. The Learned Advocate representing the decree-holders has, in any event, placed an affidavit of service on record.

8. When the matter is taken up today, none appears on behalf of the judgment-debtors. No objection to the execution has been placed before the Court. There is, consequently, no contest presently requiring adjudication.
9. The nature of the relief sought also deserves notice. This is not an attempt to enlarge the decree or to obtain in execution a relief which has not been granted in the suit. The decree itself identifies the portion of the property from which the judgment-debtors are to be evicted, the identification being by reference to the map/plan annexed to the plaint and to the decree.
10. The executing Court is required to give efficacy to the decree as it stands. Section 51 of the Code of Civil Procedure recognises delivery of property specifically decreed as one of the modes of execution, while Order XXI Rule 35 prescribes the machinery for delivery of possession of immovable property. The latter provision further contemplates removal of a person bound by the decree who refuses to vacate.
11. The appellate challenge having failed, and the judgment-debtors having declined to surrender possession despite communication of the decree, the decree-holders are entitled to invoke the machinery of execution. The Court cannot permit the fruits of a decree to remain indefinitely beyond the reach of the successful litigant by reason merely of the judgment-debtor's refusal to comply.
12. There is a further circumstance which lends clarity to the present execution. The decree-holders are not seeking, by the present proceeding, to execute the decree against defendants against whom no relief is

presently claimed. The execution is confined to defendant Nos. 5(a), 5(b) and 5(c) and to the specific portion of the property covered by the decree.

13. In the circumstances, the Court finds that prayers (A), (B) and (C) of the Tabular Statement deserve to be allowed.

14. Prayer (A) of the Tabular Statement is allowed, namely: *“Judgment on admission and decree for eviction against the defendant nos. 5(a), 5(b) and 5(c) from the open area marked in pink hatch on the map being annexure ‘B’ to the Complaint.”*

15. The aforesaid relief shall operate in terms of and be read with the judgment and decree dated 14th November, 2025.

16. Prayer (B) is also allowed, namely: *“Alternatively, Writ of possession be issued and the Sheriff be directed to execute the Writ of possession by taking actual physical possession of the open unenclosed area abutting Armenian Street at North Eastern portion of premises No. 12, Armenian Street more fully shown and marked in ‘pink’ hatch on the map/plan marked ‘B’ to the complaint and also annexed to the Decree by evicting therefrom all persons, moveables etc. and thereafter handover the possession of the said unenclosed portion to the Receiver in the Suit.”*

17. A Writ of Possession shall issue forthwith.

18. The Sheriff of this Court shall execute the Writ by taking actual physical possession of the open unenclosed area abutting Armenian Street at the north-eastern portion of premises No. 12, Armenian Street, Kolkata, more fully shown and marked in pink hatch in the map/plan marked “B” to the complaint and annexed to the decree.

19. The Sheriff shall, in execution of the decree, remove the judgment-debtors and all persons claiming through or under them who are bound by the

decree and shall remove such movables as may be necessary for effecting delivery of possession, in accordance with law.

20. The execution shall remain confined to the precise property described in the decree. The Sheriff shall not travel beyond the boundaries or description furnished by the decree and the map forming part thereof.
21. Prayer (C) is allowed, namely: *“Receiver be directed to handover possession of the said open unenclosed area abutting Armenian Street morefully shown and marked in ‘pink’ hatch of the map/plan annexed to the Decree after taking possession thereof to the decree-holder in protanto satisfaction but remain in symbolic possession.”*
22. Upon the Sheriff taking actual physical possession in terms of prayer (b), the said possession shall be handed over to the Receiver in the suit, who shall thereafter hand over possession of the said open unenclosed area to the decree-holders in protanto satisfaction of the decree, while retaining symbolic possession thereof in terms of the prayer and for the limited purpose of preserving the efficacy of the decree and facilitating further implementation, if required.
23. Learned Advocate Biswanath Chatterjee and Bikram Chand Changoiwala are required to be formally appointed for the limited purpose of carrying out the present order. The respective remuneration shall be 2000 GMs each to be paid by the decree-holder.
24. The Commissioner of Police, Kolkata, or his authorised officer, shall render such assistance as may reasonably be required by the Sheriff and/or the Receiver for effective execution of the Writ of Possession and for maintenance of peace and order during the execution process.

25. Such police assistance shall be confined to facilitating the execution of the judicial process. The police authorities shall not adjudicate upon any question of title, possession or entitlement, the same having already been determined to the extent necessary by the decree.
26. The Court has also taken note of the fact that the judgment-debtors have been served and have chosen not to appear in the present proceeding. The affidavit of service remains unrebutted. No application for stay of execution or other order restraining enforcement of the decree has been shown to this Court.
27. The decree has further been subjected to appellate scrutiny and the appeal has been dismissed. No further appeal to have been preferred has been brought to the notice of this Court. The executing Court is therefore not called upon to reconsider the merits of the adjudication. The decree speaks for itself and the present proceeding is concerned only with translating its operative mandate into possession.
28. The right of the decree-holder does not end with the pronouncement of the decree. The decree is the adjudication; execution is the means by which that adjudication acquires practical efficacy. A judgment-debtor cannot, by withholding possession after the decree has survived appellate scrutiny, postpone indefinitely the enjoyment of the relief judicially granted.
29. The execution application is, accordingly, allowed in terms of prayers (A), (B) and (C) and (E) of the Tabular Statement.
30. Writ of Possession shall issue forthwith.
31. The Sheriff shall take all necessary steps for execution of the Writ and shall submit a report upon completion of the process.

32. The Joint Receivers shall thereafter submit a report before this Court upon completion of the delivery of possession.

33. No order is passed at this stage in respect of the remaining prayers of the Tabular Statement.

34. Next date be fixed on 18th September, 2026.

35. All parties concerned shall be entitled to act on the basis of the server's copy of this order.

36. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ananya Bandyopadhyay, J.)