

IN THE HIGH COURT AT CALCUTTA

CIVIL REVISIONAL JURISDICTION

APPELLATE SIDE

C.O No. 2617 of 2025

Ek Prayaas Educational Society

Vs.

Abdul Majeed & Ors.

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioners : Mr. Rishad Medora
Mr. Meghajit Mukherjee
Ms. Labanyasree Sinha
Ms. Mobina Ali
Ms. Priyanka Mitra
Ms. Sania Das

.....Advocates

For the respondent nos. 1 to 5 : Mr. Saunak Bhattacharjee
Mr. Fazle Haque

.....Advocates

CAV On : 15.05.2026

Judgment On : 24.07.2026

Apurba Sinha Ray, J. :-

1. The petitioner, Ek Prayaas Educational Society, being a society registered under the West Bengal Societies Registration Act, 1961 is engaged in imparting free education and allied welfare activities for children from economically weaker sections of society. From the suit premises being No. 5, Abdul Ali Row, Police Station Park Street, Kolkata-700016, with effect from 1st May, 2008 at a monthly rent of Rs.1,400/-. The induction followed the surrender of tenancy by the erstwhile tenant, C.V. Cook, and

the subsequent surrender by Neelam Ahmed, whose tenancy had earlier been recognised.

2. An ejectment suit being Ejectment Suit No. 490 of 2009 was instituted by the private respondents against the erstwhile tenant, C.V. Cook, before the Presidency Small Causes Court, Calcutta, wherein, the petitioner was not impleaded as a party to the said suit. An ex parte decree for eviction was passed on 15th January, 2015, followed by the institution of Ejectment Execution Case No. 90 of 2016.

3. Upon becoming aware of the execution proceedings, the petitioner filed Misc. Case No. 48 of 2018 under Order XXI Rule 101 of the Code of Civil Procedure seeking adjudication of its independent tenancy rights in the execution proceedings. By Order No. 39 dated 21st April, 2022, the learned Judge, Presidency Small Causes Court, 3rd Bench, disposed of the said miscellaneous case by observing that the reliefs sought by the petitioner were beyond the jurisdiction of the executing court.

4. Pursuant thereto, the petitioner instituted Title Suit No. 1575 of 2024 before the City Civil Court, Calcutta seeking a declaration of its tenancy rights and obtained an ad interim order of injunction. However, upon an application under Order VII Rule 11 of the Code of Civil Procedure filed by the private respondents, the plaint was rejected by order dated 8th May, 2025.

5. The petitioner thereafter preferred First Appeal being FAT No. 246 of 2025. During the hearing of the appeal, the Division Bench observed that the order dated 21st April, 2022 appeared to be palpably erroneous and ought to be challenged before the appropriate forum. The present revisional

application has accordingly been filed assailing the order dated 21st April, 2022 passed in Misc. Case No. 48 of 2018.

6. The petitioner contends that the impugned order suffers from patent illegality and material irregularity in the exercise of jurisdiction.

7. It is contended that the learned executing court failed to appreciate that, by virtue of the provisions contained in Order XXI Rules 97 to 101 of the Code of Civil Procedure, every question relating to right, title or interest arising between the parties to such proceedings is required to be determined by the executing court itself and not by a separate suit. The refusal to adjudicate the petitioner's claim of independent tenancy on the ground of lack of jurisdiction is therefore stated to be contrary to the statutory mandate.

8. The petitioner has further prayed for remand of the proceedings to the executing court for adjudication of the petitioner's application under Order XXI Rule 101 of the Code of Civil Procedure on its own merits after affording the parties an opportunity of leading evidence and for consequential orders as may be deemed fit and proper in the interests of justice.

9. Mr. Medora, Learned Senior counsel appearing for the petitioner submitted that the impugned order dated 21st April, 2022 is wholly unsustainable in law, as the learned Executing Court declined to adjudicate the petitioner's application under Order XXI Rule 101 of the Code of Civil Procedure on the ground of lack of jurisdiction. It was contended that the Executing Court was under a statutory obligation to decide all questions relating to the right, title and interest of a person resisting execution and,

therefore, the refusal to entertain the application amounts to a failure to exercise jurisdiction vested in it.

10. It was submitted that the petitioner is a registered charitable society running a school for underprivileged children from the suit premises and has been a lawful tenant since May, 2008 after the surrender of tenancy by the previous tenant. Since its induction, the petitioner has remained in continuous possession of the premises and has regularly paid rent to the Wakf Estate.

11. Learned counsel argued that the ejectment suit was instituted only against the erstwhile tenant, C.V. Cook, although he had already surrendered his tenancy in the year 2007. Despite being aware that the petitioner was in possession of the premises, the plaintiffs deliberately did not implead the petitioner as a party to the suit and obtained an ex parte decree. It was, therefore, contended that the decree cannot be executed against the petitioner without first deciding its independent claim of tenancy.

12. It was further submitted that the petitioner had specifically alleged suppression of material facts, including the surrender of tenancy by C.V. Cook, the subsequent induction of Neelam Ahmed and thereafter the petitioner, and the acceptance of rent by the Wakf Estate. According to the petitioner, these issues directly affect the executability of the decree and ought to have been decided by the Executing Court instead of being rejected without any adjudication on merits.

13. It was also contended that, after the Executing Court declined jurisdiction, the petitioner instituted a separate civil suit seeking

declaration of its tenancy rights. However, the said suit was rejected on the ground that such questions could only be decided by the Executing Court under Order XXI Rule 101 of the Code. According to the petitioner, this resulted in a situation where one Court refused to decide the dispute while another held that only the Executing Court had the jurisdiction to do so.

14. Learned counsel further submitted that while dismissing the appeal arising from the rejection of the suit, the Division Bench observed that the petitioner had bona fide pursued the remedy before the wrong forum and left it open to the petitioner to challenge the order dated 21st April, 2022 in accordance with law. It was also pointed out that the Division Bench observed that the impugned order appeared to be "palpably erroneous".

15. On the issue of maintainability, it was argued that the impugned order cannot be treated as a decree under Order XXI Rule 103 since there was no adjudication of the petitioner's rights on merits. It was submitted that as the Executing Court merely declined to exercise jurisdiction, the present application under Article 227 of the Constitution is maintainable. It was further submitted that the petitioner is entitled to the benefit of Section 14 of the Limitation Act, having prosecuted the proceedings before the wrong forum with bona fide intention.

16. The learned counsel for the petitioner has relied upon following judgments-

i) ***Ram Kumar Tiwari and ors. vs. Deenanath and ors. reported in 2001 SCC OnLine Chh 1 para 5,6,8,9,10***

ii) Sameer Singh and another. vs . Abdul Rab and ors. Reported in 2015 1 SCC 379 para 20,25 to 28.

iii) Gurram Satyaseshamamba @ Gurram Satya Santamani and Ors. Vs. Gurram Krishnavenamma (died) by LRs and Ors. Reported in (2004) SCC OnLine AP 439

17. Mr. Bhattacharya, learned counsel appearing for Respondent Nos. 1 to 5 raised a preliminary objection as to the maintainability of the present revisional application. It was submitted that the order dated 21st April, 2022 passed on the petitioner's application under Order XXI Rule 101 of the Code of Civil Procedure is an appealable order and, therefore, the petitioner ought to have preferred an appeal instead of invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution. Accordingly, it was contended that the present revisional application is not maintainable.

18. It was submitted that Respondent Nos. 1 to 5 are the owners and landlords of the suit premises by virtue of registered deeds of conveyance and a registered deed of lease executed by the Mutawalli of the Wakf Estate. After acquiring their interest in the property, they duly informed the original tenant, C.V. Cook, of the transfer and called upon him to attorn the tenancy and pay rent to them. Since he failed to do so, they instituted Ejectment Suit No. 490 of 2009, which ultimately culminated in an ex parte decree for eviction.

19. Learned counsel further submitted that during the execution proceedings, the petitioner, claiming to be a third party, filed an application

under Order XXI Rule 101 of the Code, which was dismissed by the learned Executing Court on 21st April, 2022. Thereafter, the petitioner resisted execution of the decree and subsequently instituted Title Suit No. 1575 of 2024 seeking a declaration of its alleged tenancy rights and consequential reliefs. According to the respondents, the said suit was rightly rejected under Order VII Rule 11 of the Code.

20. It was contended that although the Division Bench, while dismissing the appeal arising out of the rejection of the plaint, granted liberty to the petitioner to challenge the order dated 21st April, 2022 in accordance with law, such liberty was expressly made subject to the provisions of the Limitation Act. According to the respondents, the petitioner has failed to satisfactorily explain the delay between the dismissal of the application under Order XXI Rule 101 and the institution of the subsequent civil suit and is, therefore, not entitled to the benefit of Section 14 of the Limitation Act.

21. Learned counsel argued that the petitioner has deliberately avoided the statutory remedy of appeal and has instead filed the present revisional application only to delay the execution of the eviction decree. It was submitted that where a statutory remedy is available, the supervisory jurisdiction under Article 227 ought not to be invoked.

22. It was further submitted that every order passed under the relevant provisions of Order XXI is appealable and that no distinction can be drawn between an order rejecting an application on merits and one dismissing it on the ground of maintainability or jurisdiction. Consequently, the

respondents contended that the present revisional application is not maintainable.

23. Lastly, it was submitted that the petitioner has misused the liberty granted by the Division Bench by filing the present revisional application instead of availing the appropriate statutory remedy, thereby delaying the execution proceedings and depriving the respondents of the fruits of the eviction decree. On the aforesaid grounds, the respondents prayed for dismissal of the revisional application.

24. The learned counsel for the respondents has relied upon the following judgments:

i) Radhey Shyam & Anr. vs. Chhabi Nath & Ors. Reported in (2015) 5 SCC 423 para 16

ii) Surajmal Jain Vs. Prabir Kumar Sett reported in (1980) 2 CLJ page 161 para 11 to 15.

iii) CO 1948 of 2022 , Minor Khandekar Tamanna Khatun daughter of Khandkar Mauddin Hossain vs. Sanjib Kumar Saha & Ors.(The order the Hon'ble High Court at Calcutta)

Court's View:

25. The term 'adjudication' denotes a process whereby the adjudicating authority initiates some enquiry, collects evidence etc. in search of truthfulness of some allegations or counter-allegations and thereafter, culminates into a reasoned order. In this case it appears that the learned Executing Court at the time of rejecting the application under order XXI Rule 101 of the Code of Civil Procedure did not make any enquiry to the allegations made by the petitioner/obstructionist but passed an order holding that the said executing Court did not have the

jurisdiction to entertain such application under Order XXI Rule 101 of the Code of Civil Procedure.

26. The decree holder claims that such order partakes the nature of a deemed decree and the same being appealable one, the present revisional application is not maintainable. In this regard, Mr. Bhattacharyya has relied upon 3 decisions as already referred to above. In ***Surajmal Jain (supra)***, the Hon'ble High Court at Calcutta has been pleased to hold that no distinction can be legitimately made between appeals against orders which are deemed to be decrees and those against the orders which have the same force and are subject to the same condition as to appeal, or otherwise as if they were decrees.

27. In ***Radhey Shyam & Anr. (supra)***, the Hon'ble Apex Court, which is a three Bench decision, has clearly laid down that where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under article 227 of the Constitution.

28. Mr. Bhattacharyya has also relied upon an order of a learned Coordinate Bench in connection with CO 1948 of 2022 (order dated 16.11.2022) wherein the learned Coordinate Bench was pleased to hold as hereunder.

“On perusal of the order no. 26 dated 05.05.2018 as passed in Misc. (LR) case No. 2 of 2014 by the Learned Civil Judge (Junior Division), 1st Court, Kandi, Murshidabad, it reveals that the petitions as filed by the present opposite parties under Order 21 Rule 99, 100 and 103 of the Code of Civil Procedure have been rejected and, therefore, such order has to be treated as a decree and challenging that order, an appeal has got to be filed. Since before the learned Revisional Court, a revisional application has been preferred ignoring the correct provision of law and since the

learned revisional court has disposed of the said revisional application overlooking the aforesaid provision of law, in considered view of this court the impugned judgment as passed by the revisional court in the civil revision case no. 2 of 2018 cannot be sustained.”

29. On the other hand, the petitioner has relied upon decisions **Ram Kumar Tiwari (supra), Sameer Singh (supra)**.

30. In **Ram kumar Tiwari (supra)** it was held by Hon’ble Court that as the application filed by the obstructionist was rejected without any inquiry or without making any adjudication into the right, title or interest of the parties or without adopting the procedure required for disposal of the application, such an order, in the considered opinion of the Court, would be revisable.

31. In **Sameer Singh (supra)**, it has been held that order 21 Rule 101 of the Code provides for the determination of the necessary issues. Rule 103 clearly stipulates that when an application is adjudicated upon Rule 98 or 100 the said order shall have the same force as if it were a decree. Thus it is a deemed decree. If a Court declines to adjudicate on the ground that it does not have jurisdiction, the said order cannot earn the status of a decree. If an executing court only expresses its inability to adjudicate by stating that it lacks jurisdiction, then the status of the order has to be different.

32. As per Black’s Law Dictionary, 11th Edition at page no. 52 (Thomson Reuters) the term ‘**adjudication**’ means “the legal process of resolving a dispute, the process of the judicially deciding a case. Adjudication is the effort to identify the rights of the contending

parties now by identifying what were, in law, the rights and wrongs, or validity or invalidity, of their actions and transactions when entered upon and done. [John Finnis, *Philosophy of Law* 399(2011)].”

33. From order no. 39 dated 21.04.2022 passed by the learned Judge, Presidency Small Causes Court, 3rd Bench, Calcutta it is revealed that the said application was rejected by the Court on the ground that the prayer made in the said petition was beyond the jurisdiction/purview of the execution Court. In fact, there was no formal adjudication on merits. In both decree or deemed decree there must be an expression of adjudication or decision. No effort was taken by the learned executing Court to decide on the rights and obligation of the parties thereto. Therefore, as the process of inquiry as to the rights and interest of the concerned party was not even initiated, such order cannot be said to be a result of an adjudication process. In fact, there is no formal expression of adjudication or decision on the rights and obligation of the parties to the proceeding. If we peruse the judgment of ***Surajmal Jain (supra)*** and ***Radhey Shyam & Anr. (supra)*** we shall find that the factual matrix was completely different from the case in the hand.

34. In ***Surajmal Jain (supra)*** the decree holder made an application under Order XXI Rule 97 of the Code in the Executing Court for execution of the writ of delivery of possession with police help. The sub tenant had opposed the said application, and the Execution Court allowed the above application and directed the decree holder to get possession of the suit premises through police help. The appellant

being aggrieved presented a memorandum of appeal to the High Court which was described as 'an appeal from original decree.' The appellant had paid the ad valorem court fees on the said memorandum of appeal. The stamp reporter reported that the 'memorandum of appeal' should be classified as an 'appeal from order'. In the above circumstances the Hon'ble High Court at Calcutta has dealt with the issue in detail and has been pleased to hold that for the purpose of appealability the Code has divided the orders broadly into several categories. The Hon'ble Court has been further pleased to hold that the expression 'Order' has been defined in Section 2 (14) of the Code as the formal expression of decision of a civil court which is not a decree. In our case, it is found that no formal expression of decision on the rights and obligations of the petitioner has been made in order no. 39 dated 21.04.2022 as aforesaid.

35. In *Radhey Shyam & Anr. (supra)* the Hon'ble Court has dealt with an issue, that is, whether an order of civil court was amenable to writ jurisdiction under article 226 of the Constitution.

36. According to the Hon'ble Court, when a statutory right to file an appeal has been laid down, it is not open to the High Court to entertain a petition under article 227 of the Constitution. Even if a remedy by way of appeal has not been provided for against the order of judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure.

37. The order dated 16.11.2022 passed in CO 1948 of 2022 has also indicated that by the relevant order the learned executing court was pleased to reject the opposite party's three applications under order 21 Rules 99, 100 and 101 of the Code of Civil Procedure and at the same time allowed the petition for the police help filed by the decree holder. As there was adjudication on 3 petitions, the same cannot be equated with the order No. 39 dated 21.04.2022 as indicated above. Therefore, as the learned executing Court did not initiate or complete the process of adjudication on the relevant petition filed by the obstructionist/petitioner the judgments cited from the side of the decree holder are not applicable in this case.

38. Be it mentioned here that in ***Gurram Satyaseshamamba (supra)*** it has been rightly observed that the curtailment of revisional jurisdiction of the High Court does not take away- and could not have taken away-the Constitutional jurisdiction of the High Court to issue a writ of certiorari to a Civil Court nor the power of superintendence conferred on the High Court under Article 227 of the Constitution is taken away or whittled down. The power exists, untrammelled by the amendment in Section 115 of the CPC, and is available to be exercised subject to rules of self discipline and practice which are well settled.

39. The learned counsel Mr. Bhattacharyya has argued that the fact that there was a delay of one and half years in filing the relevant suit which was ultimately dismissed, is indicative that the obstructionist

is not at all willing to dispose of the matter very quickly. In other words, the obstructionist has taken the path of dilatory tactics.

40. Although I find some merits in the submission of the learned counsel Mr. Bhattacharyya in this regard, but as the Hon'ble Division Bench has given the obstructionist protection under Section 14 of the Limitation Act, I think that the said issue cannot be considered at this stage particularly when the record shows that petitioner/obstructionist filed the petition under order 21 Rule 101 before the executing court in time.

41. Accordingly, instant Revisional application being No. **C.O No. 2617 of 2025** is allowed. The order No. 39 dated 21.04.2022 is hereby set aside. The learned executing court i.e. the learned Judge, Presidency Small Causes Court, 3rd Bench, Calcutta is directed to dispose of the application under order XXI Rule 101 of Civil Procedure Code filed by the obstructionist in accordance with law within 6 months from the date of receipt of this order.

42. Let a copy of this order be sent to the learned executing court for information and necessary action. The interim order, if any, stands vacated. Connected application, if any, is disposed of.

43. Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(Apurba Sinha Ray, J.)