

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.O. No. 1225 of 2025

Mou Ghosh

VS

M/s. Jaiswal Brothers & Ors.

For the Petitioner	:	Mr. Dyutiman Banerjee, Adv. Mr. Debjit Dutta, Adv.
For the Opposite Party No. 3	:	Mr. Manabendra Saha Roy, Adv. Mr. Sounak Bhattacharjee, Adv. Mr. Milan Kanti Mandal, Adv. Mr. Anirban Saha Roy, Adv.
Heard on	:	24.08.2026
Delivered on	:	01.09.2026
Uploaded on	:	01.09.2026

Ajay Kumar Gupta, J.:

1. By filing this application under Article 227 of the Constitution of India, the petitioner/plaintiff challenges the order No. 11 dated 03.04.2025 passed by the Learned Chief Judge, City Civil Court at Calcutta in Title Suit No. 2398 of 2022 (Mou Ghosh Vs. M/s. Jaiswal Brothers & Ors.).

- 2.** By the said order impugned, the learned Chief Judge directed immediate restoration of possession of Smt. Jayanti Ghosh and her family members in the suit property situated on the third floor of premises No. B/19K/H/37, Goa Bagan Street, Kolkata – 700 006 with the help of Local Police Station being the Burtolla Police Station by breaking open the padlock, if any, within 24 hours from the time of receiving the order as the learned Judge noticed that the decree holder/petitioner committed fraud upon the Court apparent from the record on the basis of which the compromise decree was granted by the Learned Judge, Bench – II, City Civil Court, Calcutta without disposing of the application filed under Order 23 Rule 3A read with Section 151 of the Code of Civil Procedure.
- 3.** The petitioner had filed a suit for a decree of declaration and injunction before the Learned Chief Judge, City Civil Court at Calcutta. It was subsequently transferred to the learned Judge, Bench-II, City Civil Court, Calcutta, being Title Suit No. 2398 of 2022, against M/s. Jaiswal Brothers, a partnership firm, *inter alia*, for the following reliefs:-

 - a) Decree for declaration that the plaintiff is entitled to get the scheduled flat as Owner/Lessee of the said flat; Alternatively, a decree for declaration that the plaintiff is entitled to get back

the entire Rs. 16,00,000/- along with interest from the Defendants; Three persons, namely Kundan Jaiswal, Chandan Jaiswal and Jayanti Ghosh were arrayed as the representatives of the said defendants' partnership firm.

4. In the said suit, on March 21, 2023, an application under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure had been filed based on which the suit was decreed on compromise on April 3, 2023 after examination of witnesses.
5. Thereafter, execution was initiated, and in execution of the said compromise decree, the plaintiff took possession of the suit flat on March 19, 2025 with the help of police.
6. Suddenly, on 27th March, 2025, one of the representatives of the said defendant firm, Smt. Jayanti Ghosh had filed an application before the learned Chief Judge, City Civil Court at Calcutta captioned as "Complete travesty of justice" praying that leave be granted to file appropriate application for setting aside the compromise decree, which had been obtained by the plaintiff by playing fraud upon the Court and the petitioner.
7. The learned Chief Judge, by the order dated March 27, 2025 had called for the records of the said Title Suit No. 2398 of 2022 from the learned Judge, Bench II.

8. On 3rd April, 2025, Smt. Jayanti Ghosh moved an application before the learned Chief Judge, City Civil Court at Calcutta, *inter alia*, praying to set aside the said compromise decree and restore her possession in respect of the said suit flat. The learned Chief Judge, by the Order No.11 dated April 3, 2025, *inter alia*, had passed the following directions seemingly on the said application captioned as “Complete Travesty of Justice” and fixed May 16, 2025 for hearing of the said application under XXIII Rule 3A of the Code:

“Having noticed the fraud committed upon the Court apparent from the record on the basis of which the compromise decree was granted by the Id. Judge, Bench-II, City Civil Court, Calcutta, this Court directs immediate restoration of possession of Smt. Jayanti Ghosh and her family members in the suit property situate on the third floor of premises no. B/19K/H/37, Goa Bagan Street, Kolkata 700006 with the help of local Police Station being the Burtolla Police Station by breaking open the padlock, if any, within 24 hours from the time of receiving of this Order.

The matter shall be listed for hearing of the application under order 23 Rule 3A read with Section 151 of the Code of Civil Procedure on 16.05.2025”

- 9.** The said order is under challenge in the instant application under Article 227 of the Constitution of India.
- 10.** The revisional application was initially moved before the then Co-ordinate Bench of this Court. In course of hearing, learned advocate for the petitioner questioned under which provision of law, the learned Chief Judge had called for the records of a suit that has already been disposed of, especially when the decree passed in the suit, has been executed to the full satisfaction of the Executing Court.
- 11.** It was further submitted that the plaintiff has been dispossessed from the suit flat with the help of police, although no opportunity was given to the petitioner to contest or controvert the contention of Smt. Jayanti Ghosh. It was further submitted that in the order impugned, the allegations recorded against several lawyers are completely unwarranted.
- 12.** Learned senior Counsel, Mr. Basu appearing on behalf of Smt. Jayanti Ghosh, the opposite party no.3 herein, had submitted that the compromise decree is the product of fraud, as would be evident on the face of it, since his client, even though a party in the said suit, was not made a party to the application under Order XXIII Rule 3 of the Code of Civil Procedure, despite the compromise decree obtained thereof.

- 13.** Upon thorough hearing of the parties and considering the serious nature of the allegation of fraud, the then Co-ordinate Bench of this Court called for the record to see the whole events.
- 14.** After receiving the case record and scrutinising the same, it has emerged that the application captioned as “Complete travesty of justice” was filed only to seek leave to file an appropriate application for setting aside the said compromise decree. The learned Chief Judge, by the order impugned, directed restoration of the possession of the suit flat in favour of Smt. Jayanti Ghosh and fixed a date for hearing her application for setting aside the said compromise decree.
- 15.** Upon further perusal of the record, it was noted that admittedly, the suit in whose record, the learned Chief Judge has taken the applications has already been disposed of by another court; therefore, there is no scope for the learned Chief Judge to exercise her power under Section 10 of the City Civil Court Act, 1953 to call for the records of the said suit. It was also not clear as to how the learned Chief Judge had directed restoration of possession of the suit flat when the application of Smt. Jayanti Ghosh for such relief is still pending.
- 16.** Be that as it may, the then Co-ordinate Bench directed the learned Registrar (Judicial Service) to call for an explanation

from the learned Chief Judge, City Civil Court, Calcutta justifying the steps taken in the matter by the said learned Judge and to place the same before the Court on the next date of hearing and ultimately, all further proceedings before the learned Chief Judge, City Civil Court, Calcutta, in respect of the application filed by Smt. Jayanti Ghosh under Order XXIII Rule 3A of the Code stayed until further order(s).

- 17.** Subsequently, vide order dated 28.04.2025, the then Co-ordinate Bench of this Court accepted the explanation offered by the learned Chief Judge. The learned Court further held that the issue now left for consideration is whether the possession of the petitioner over the suit property can be restored as she was dispossessed from it in execution of the order impugned. The Co-ordinate Bench further directed the parties, in the meantime, to maintain status quo in respect of the nature, character and possession of the suit flat until further order(s).
- 18.** After demit from the office of the then Co-ordinate Bench, this matter has been assigned before this Court for its disposal.
- 19.** Learned counsel for the petitioner strenuously submitted that the then Co-ordinate Bench of this Court was fully satisfied that the dispossession from the suit property was prima facie wholly illegal without disposing of the application filed by the opposite

party no.3 under Order 23 Rule 3A, claiming that the decree obtained by the petitioner was based on fraud committed upon the court. Accordingly, an explanation was sought for from the Learned Chief Judge, City Civil Court. In turn, the then Chief Judge, City Civil Court submitted her explanation and the same was accepted by the then Co-ordinate Bench. It is, therefore, submitted that the order impugned should be set aside and further the physical peaceful possession of the suit property be restored to the petitioner as peaceful possession in execution proceeding of the compromise decree was delivered in favour of the petitioner on 19.03.2025 with police help.

- 20.** It was further submitted that the question of practising fraud either upon the Trial Court or the opposite party no.3 does not arise. The application under Order XXIII Rule 3 was filed by the parties, and the Trial Court accepted it after being satisfied. The allegation of the opposite party no.3 is out and out false and frivolous. The same ought to be dismissed by the Trial Court upon hearing the parties. The subject application is still pending.
- 21.** Per contra, the learned counsel representing the opposite party no. 3, admitted that the possession was delivered to the Opposite party upon direction by the then Chief Judge, although

the application under Order 23 Rule 3A read with section 151 of the Code of Civil Procedure praying for setting aside of the said compromise decree was kept pending for final disposal.

22. It was further submitted that a direction is required to be passed directing the concerned court to dispose of the application as expeditiously as possible without disturbing the peaceful possession of the opposite party No. 3 until disposal of the application under consideration. The revisional application should be disposed of directing both parties to maintain status quo in respect of the nature, character and possession of the suit flat until disposal of the application filed by the Opposite Party No. 3, since the Co-ordinate Bench also directed a similar order of status quo long back on 13.06.2025. Ever since, it has continued, and the Opposite Party No. 3 has been in possession of the suit flat.

23. Heard the learned counsels for the respective parties at length.

24. Considering the whole issue involved in the present revisional application and upon careful perusal of the material on record, this court is of the similar view that the impugned order, dated 03.04.2025 passed by the then Chief Judge, City Civil Court, Calcutta, was ex-facie illegal as it was passed without allowing the parties an opportunity of hearing and even without disposal

of the application under Order 23 Rule 3A of the Code of Civil Procedure filed by the Opposite party no.3.

- 25.** Now, the question that remains is whether possession of the suit property should be with the opposite party no. 3 or be restored in favour of the decree holder/petitioner? It is well settled law that a compromise decree cannot be challenged unless it was obtained by practising fraud upon the court or the parties. It can only be challenged on the ground that the underlying settlement agreement or compromise was not lawful, such as being vitiated by fraud, undue influence, coercion, misrepresentation, or mistake.
- 26.** Upon meticulous perusal of the joint compromise petition, filed by the parties before the Trial Court, it is prima facie revealed that only the plaintiff and Defendant no.2, Chandan Jaiswal, signed the joint compromise petition without obtaining authorisation from the defendant no.1, Kundan Jaiswal and Defendant no.3/opposite party no.3, Smt. Jayanti Ghose herein. While obtaining the decree on the basis of a joint compromise petition, consent and signatures of all plaintiffs and defendants are essential; otherwise, the same is not acceptable in law. A decree passed without proper consent or signatures of the parties themselves or their duly authorised representatives, who

hold express authority. The Hon'ble Supreme Court in the landmark decision in the case of ***S.P. Chengalvaraya Naidu v. Jagannath***¹ clearly held that one who comes to court must come with clean hands and a decree secured via deception is void and non-est.

- 27.** It is an undisputed fact that the possession of the suit property was delivered to the decree holder/petitioner with police help on 19.03.2025, after institution of execution case being Misc Case 3988 of 2023. However, subsequently, it was restored to one of the defendants, namely, Smt. Jayanti Ghosh, the opposite party no.3 herein, pursuant to order no.11 dated 03.04.2025 passed by the Learned Chief Judge, City Civil Court at Calcutta in Title Suit No. 2398 of 2022 (Mou Ghosh Vs. M/s. Jaiswal Brothers & Ors.). The issue raised by the Opposite Party No. 3 is that the compromise decree was obtained on the ground of fraudulent practice upon the court, and the petition was pending before the Chief Judge, City Civil Court at Calcutta. The same is pending consideration. Therefore, this court is of the view that it would not be appropriate to enter into the merits of the case at this stage.

¹ (1994) 1 SCC 1

- 28.** Admittedly, the compromise decree was passed by the learned Judge, Bench II, Calcutta. Therefore, the application filed under Order 23 Rule 3A of the CPC ought to be heard by the same court, which accepted the compromise agreement/joint petition and converted it into a decree. It has the jurisdiction to entertain, hear and decide a recall or challenge application under the provisions of Order 23 Rule 3A of the CPC. At the cost of repetition, this court is of the same view as the then Co-ordinate Bench observed that admittedly, the suit in whose record the learned Chief Judge has taken the applications, has already been disposed of by another court; therefore, there is no scope for the learned Chief Judge to exercise her power under Section 10 of the City Civil Court Act, 1953. Therefore, the application pending before the Chief Judge, City Civil Court at Calcutta is required to be transmitted to the original court, where final compromise decree was allowed.
- 29.** The order No. 11 dated 03.04.2025 passed by the Learned Chief Judge, City Civil Court at Calcutta in Title Suit No. 2398 of 2022 (Mou Ghosh Vs. M/s. Jaiswal Brothers & Ors.) is hereby set aside. However, considering the overall facts involved in the present case, this court is of the opinion that the possession of the suit property mentioned in the schedule of the plaint. i.e.

ALL THAT a flat on the 3rd floor measuring about 450 sqft at premises No. B/19K/H/37, Goabagan Street, Kolkata-700006 shall remain with the opposite party no.3 till disposal of the application filed under order 23 Rule 3A of the Code of Civil Procedure and parties shall maintain status quo in respect of the nature, character and possession of the suit flat since the said status quo order granted and is maintaining by the opposite party no.3 on and from 28.04.20025. The Chief Judge, City Civil Court at Calcutta is directed to transmit the Trial Court Records to the learned Judge, Bench – II, City Civil Court at Calcutta immediately. In turn, the learned Judge, Bench – II is directed to expedite the matter and finally dispose of the applications as expeditiously as possible without granting unnecessary adjournment to the parties. It is relevant to clarify that the Trial Court shall decide the application independently and in accordance with law without being influenced by any of the observation, whatsoever made by this court hereinabove.

- 30.** Consequently, **C.O. No. 1225 of 2025** stands **allowed** partly without order as to costs. Connected applications, if any, are also, thus, disposed of.

- 31.** Let a copy of this judgment be forwarded to the Learned Chief Judge, City Civil Court at Calcutta for information and taking necessary steps.
- 32.** All parties shall act on the basis of a server copy of this judgment duly downloaded from the official *website* of this court.
- 33.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

(P.A.)