OD-4

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

APOT/187/2026
IA No.GA/1/2026
IA No.GA/2/2026

ANCHIT DUTTA

-VERSUS-

EDELWEISS ASSETS RECONSTRUCTION COMPANY LIMITED AND ORS.

BEFORE:
The Hon'ble JUSTICE DEBANGSU BASAK
-AND-
The Hon'ble JUSTICE ARYAK DUTT

For the Appellant	:	Mr. Sanjib Bandhopadhyay, Adv. Mr. Ashok Kr. Singh, Adv. Mr. Manoj Kr. Mondal, Adv.
For Respondent No. 1	:	Mr. Paritosh Sinha, Adv. Mr. K. K. Pandey, Adv. Ms. Sonia Nandy, Adv. Ms. Mallika Bothra, Adv.
HEARD ON	:	25.11.2026
DELIVERED ON	:	25.11.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against judgment and order dated August 4, 20267 passed by the learned Single Judge in IA No.GA/7/2026 in EC/140/2018.

2. IA No. GA/1/2026 is an application for condonation of delay of 35 days in making and filing the instant appeal.

3. Respondent does not object to the delay being condoned.

4. In such circumstances, delay in making and filing the appeal is condoned.

5. IA No. GA/1/2026 is allowed.

6. Appellant is the purchaser of an immovable property put up for sale in execution of an award.

7. The award is dated October 28, 2017. By such award, the award-holder was held to be entitled to a specified amount of money from the award-debtor. Apparently, an immovable property was mortgaged as security.

8. Award was put into execution by the award-holder. Execution petition was registered as EC/140/2018.

9. Court is informed that, the sale of the mortgaged property was advertised on "as is where is" basis. Appellant before us is the purchaser of such immovable property. Appellant purchased the immovable property on as is where is basis.

10. Appellant thereafter applied by way of IA No.GA/7/2026 before the executing Court under Order XXI Rules 97 to 101 of the Code of

Civil Procedure, 1908 seeking eviction of the occupants of the property concerned.

11. By the impugned judgment and order, learned Single Judge dismissed such application after finding that, the award put into execution related to a money decree and, that, the property put up for sale was purchased by the appellant on "as is where is" basis and also the fact that, the occupants as against whom the appellant was seeking eviction under Order XXI Rules 97 to 101 of the Code of Civil Procedure, 1908 stated that, they do not object to the possession of the appellant in respect of the immovable property concerned.

12. Learned Advocate appearing for the appellant relies upon *2023 INSC 764 (Ved Kumari vs. Municipal Corporation of Delhi, through its Commissioner)* in support of the proposition that a proceeding under Order XXI Rules 97 to 101 is maintainable.

13. On the proposition that a purchaser is entitled to apply under Order XXI Rule 97 of the Code of Civil Procedure, 1908, learned Advocate appearing for the appellant relies upon the judgment and order dated May 10, 2023 passed in *Civil Appeal No. 3844 of 2023 (Bhasker & Anr. vs. Ayodhya Jewellers).*

14. Learned Advocate appearing for the award-holder submits that, the receiver submitted a report before the executing Court stating that possession of the immovable property concerned was made over on 'as is where is' basis to the appellant.

15. As noted above, the immovable property was put up for sale through Court in execution of the award. A sale deed was executed and registered on October 30, 2025. It is this sale deed on the basis of which the appellant before us claims title to the immovable property concerned.

16. In the sale deed dated October 30, 2025, one of the covenants is that, the appellant as the purchaser may peaceably and quietly enter upon and enjoy and possess the immovable property concerned absolutely. Receiver put the appellant in possession on "as is what is" basis. Appellant took such possession without raising any objections.

17. Apparently, there are several occupants in the immovable property concerned.

18. As noted above, the immovable property concerned was put up for sale on "as is where is" basis. Appellant purchased the immovable property less than the market value of the same as such was. Since it was put up for sale on as is where is basis, the appellant obtained benefit of the sale consideration by purchasing the property on as is where is basis.

19. In our view, "as is where is" means that, the property is put up for sale in the condition as obtaining on the date of the advertisement for sale. Several occupants were there when the property was put up for sale and, that is why, it was put up for sale on "as is where is" basis. Moreover, appellant enjoyed the benefits of such condition of sale by purchasing it much less than the prevailing

market value. Appellant was put in possession of the immoveable property on such basis. Appellant accepted such possession. The question of any person resisting possession of the appellant does not arise for the provision of Order XXI Rules 97 to 101 of the Code of Civil Procedure, 1908 being attracted.

20. In *Ved Kumari (supra)* the Hon'ble Supreme Court was concerned with the order of the executing Court affirmed by the High Court holding that a decree for possession of the immovable property was not executable against the judgment-debtor. In the factual matrix there was a decree for possession. The Hon'ble Supreme Court held that, the purchaser of such immovable property stood in the shoes of the decree-holder and was, therefore, entitled to apply under Order XXI Rule 97 of the Code of Civil Procedure, 1908 before the executing Court to obtain possession.

21. In the facts of *Bhasker & Anr.(supra)* the issue which fell for consideration was, what would be the starting point of limitation for filing an application under Order XXI Rule 95 of the Code of Civil Procedure, 1908. The factual matrix in the present case are different and the issue raised in the present appeal is completely different.

22. As noted above, since there was no award for eviction in the award which was put into execution and since the appellant before us is the purchaser of an immovable property which was put up for sale on 'as is where is' basis, we are not minded to interfere with the impugned judgment and order.

23. Accordingly, APOT/187/2026 along with the connection application for stay being IA No.GA/2/2026 is dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

24. I agree.

(ARYAK DUTT, J.)

A/s.