

**(2011) 07 CAL CK 0001**

**Calcutta High Court**

**Case No:** C.O. No"s. 2335 and 3335 of 2007

Sibani Rakshit

APPELLANT

Vs

Keya Dey (Nee Das) <BR> Keya  
Dey (Nee Das) Vs Sibani Rakshit

RESPONDENT

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**Date of Decision:** July 27, 2011

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10(2)

**Citation:** (2012) 5 CHN 403

**Hon'ble Judges:** Prasenjit Mandal, J

**Bench:** Single Bench

**Advocate:** Shila Sarkar in C.O. No. 3335 of 2007, for the Appellant;

**Final Decision:** Dismissed

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### **Judgement**

Prasenjit Mandal, J.

These two applications have arisen out of the same order and as such, both are disposed of by this common judgment. For convenience, now I am discussing the C.O. No. 3335 of 2007.

C.O. No. 3335 of 2007:-

This revisional application is directed against the order dated April 24, 2007 passed by the learned Judge, City Civil Court, 4th Bench, Calcutta in Title Suit No. 1238 of 2003 thereby rejecting the prayer of the learned Receiver for initiation of legal proceedings against the illegal occupiers.

2. The plaintiffs instituted a suit being Title Suit No. 1238 of 2003 against the defendant/opposite party before the City Civil Court, Calcutta for declaration, injunction, cancellation of documents, other reliefs etc. The defendants are contesting the said suit. The plaintiffs filed an application for appointment of a Receiver in respect of the premises in suit and a Receiver was appointed as per

order of this Hon"ble Court. The Receiver is functioning. Thereafter, the receiver filed an application for permission to proceed against the unauthorised occupiers of the premises in suit and that application was rejected by the impugned order. Being aggrieved, this application has been preferred.

3. Now, the question is whether the impugned order should be sustained.

4. Upon hearing the learned counsel for the parties and on going through the materials on record, I find that the learned Trial Judge has committed a gross material irregularity in rejecting the prayer of the learned Receiver. The learned Trial Judge rejected the prayer on the ground that those unauthorised occupiers applied for addition of parties and their prayer was turned down while disposing of their application under Order 1 Rule 10(2) of the CPC. This is one aspect of the matter in suit involved in the suit for adjudication. The application under Order 1 Rule 10(2) of the CPC has been rejected rightly on the ground that if they were allowed to contest the suit, they would file written statements according to their own defence stance and then it will not remain a suit for declaration and injunction only as prayed for by the plaintiff. The scope of the matter in suit would be enlarged unnecessarily. So, the application under Order 1 Rule 10(2) of the CPC, I hold, has been rightly rejected by the learned Trial Judge. But, so far as the function of the Receiver is concerned, when he noticed that the said persons who were occupying a portion of the premises in suit unauthorisely, he prayed for permission to take necessary steps. Unless and until, the necessary permission is given, the Receiver is unable to take necessary steps against those unauthorised occupiers and the effect would be the unauthorised occupiers would continue to possess the premises without any action against them. They will enjoy the premises in suit scot free without any liabilities.

5. The contention of the prospective parties to the application under Order 1 Rule 10(2) of the C.P.C. was that they were inducted as tenant under Smt. Keya Dey, the defendant/opposite party herein. It is a matter of adjudication whether the defendant had any right to induct the tenants. So, it shall be decided afterwards at the time of consideration of the merit of the suit.

6. Therefore, I am of the view that the ground assigned by the learned Trial Judge for rejection of the prayer of the Receiver cannot be supported. The impugned order needs to be set aside.

7. Accordingly, the revisional application is allowed. The impugned order is hereby set aside. The application dated November 13, 2006 filed by the Receiver stands allowed. The learned Trial Judge shall proceed with the suit from the stage of allowing that application filed by the learned Receiver. He shall issue appropriate directions upon the Receiver accordingly by issuance of an appropriate writ or order.

C.O. No. 2335 of 2007:-

8. This civil revisional application has been filed by the tenant/defendant. In view of the order in C.O. No. 3335 of 2007, this revisional application is devoid of merits.

9. Accordingly, this revisional application is dismissed. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.