

**(1991) 05 CAL CK 0007****Calcutta High Court****Case No:** None

In Re: Inder Sengupta

APPELLANT

Vs

RESPONDENT

**Date of Decision:** May 13, 1991**Acts Referred:**

- West Bengal Premises Tenancy Act, 1997 - Section 13(1), 47

**Citation:** 95 CWN 1019**Hon'ble Judges:** S.K. Mukherjee, J; A.M. Sinha, J**Bench:** Division Bench**Advocate:** B.M. Mitra and Prasun Ghosh, for the Appellant;**Final Decision:** Dismissed

### **Judgement**

S.K. Mukherjee, J.

This revisional application is directed against an order of rejection by the learned Assistant District Judge, 2nd Court at Alipore in Title Execution Case No. 20 of 1979 of an application preferred on behalf of the judgment-debtor, which was registered and numbered as misc. case no. 42 of 1990. From the submissions made and the materials produced it appears that there was a suit ending with a decree for eviction of the judgment-debtor from two schedules of properties, one where the judgment-debtor was alleged to be a tenant and the other - where the judgment-debtor was alleged to be in forcible occupation as a trespasser.

2. The decree, ultimately passed in second appeal by this High Court, was challenged before the Supreme Court of India and from the order passed by the Supreme Court in Civil Appeal No. 1521 of 1984 on 5th of March, 1991, it appears that as far as the decree for eviction from A Schedule property on the grounds u/s 13(1) of the West Bengal Premises Tenancy Act was concerned, the same was upset and the second appeal was remanded to High Court for reconsidering the question of bonafide requirement as found by the courts below with reference to the facts

and law concerning the same by the High Court. As far as the decree relating to eviction from B Schedule property as a trespasser was concerned the same remained untouched in terms of the Supreme Court Order; and it is admitted that it is that B schedule property, possession of which is sought to be obtained by levying the present execution.

3. Mr. Mitra on behalf of the judgment-debtor has strongly canvassed before us that although eviction was sought from B schedule property, *inter alia*, on the allegation that the judgment-debtor was a trespasser, since the suit was a composite one, requirements u/s 13(1) of the West Bengal Premises Tenancy Act were needed to be fulfilled before a decree could be said to be a valid decree and since such requirements remained non-complied, the decree has become a nullity. Mr. Mitra's said submission is founded on the composite nature of the suit.

4. We have considered the said submission carefully and we have also gone through the reasonings given by the learned Assistant District Judge. The only point" which was urged before the learned Assistant District Judge relates to the non-fulfilment of the requirements u/s 13(1) of the West Bengal Premises Tenancy Act which, in our view, the learned Assistant District Judge rightly refused to accept as the prayer for eviction relating to the B Schedule property being not as a tenant, but on the allegation of the judgment-debtor having trespassed into the "same, there is no necessity for fulfilment of the criteria u/s 13(1) of the West Bengal premises Tenancy Act.

5. We do not find that any defence about the non-executability of the decree piece-meal being composite decree had been taken before the Executing court in the section 47 objection.

6. For the reasons aforesaid, we do not propose to interfere with the order of the learned Judge as we uphold the same on the reasonings as given.

7. The revisional application, consequently, stands dismissed, but without any order as to costs.

8. The prayer for stay of operation of our order as made is refused.

The prayer for leave to appeal to the Supreme Court is made and the same is refused.

The certified copy of the impugned order as filed in court today be kept with the records of this case.

If an urgent certified copy of this order is applied for, the department is directed to deliver the same within one week from the date of deposit of the requisite stamps and folios.

A.M. Sinha, J.

I agree.