

## Prema Gupta Vs TCI Finance Ltd. and Another

**Court:** Calcutta High Court

**Date of Decision:** March 6, 2008

**Acts Referred:** Civil Procedure Code, 1908 (CPC) â€” Order 21 Rule 100

**Citation:** (2008) 4 CALLT 175 : (2009) 1 CHN 135

**Hon'ble Judges:** Pinaki Chandra Ghose, J; Biswanath Somadder, J

**Bench:** Division Bench

**Advocate:** Debal Banerji and Bidyut Dutta and R.B. Mitra, for the Appellant; Ghanashyam Patra, for the Respondent

**Final Decision:** Dismissed

### Judgement

1. Both the above appeals have been preferred by the appellant, Prema Gupta, against two orders, being order dated 2nd May, 2006 (in G.A.

No. 940 of 2006, E.C. No. 15 of 1998) and order dated 10th May, 2006 (in G.A. No. 4949 of 1998, E.C. No. 15 of 1998 with E.O.S. No.

320 of 1998), passed by the Hon"ble First Court.

2. The appellant Prema Gupta is the mother of the judgment debtor, one Ashok Kumar Gupta, who suffered a decree on 21st August, 1998

passed by a Hyderabad Court for a sum of Rs. 20.91 lakhs approximately. The decree was subsequently transmitted to this High Court for the

purpose of execution. It is at the stage of execution of the decree that the appellant Prema Gupta, for the first time, approached the Hon"ble First

Court for the purpose of trying to assert the fact that her son Ashok Kumar Gupta, who was the judgment debtor, has no right, title and interest

over any of the flats in question, which were to be sold in execution of the decree suffered by her son. The Hon"ble First Court, while passing the

order dated 2nd May, 2006 has, inter alia, observed that the Hon"ble Supreme Court had already recorded in the judgment and order dated 26th

September, 2005 that Prema Gupta has never pressed her claim as the owner of the property and that her application for intervention was

dismissed by the Hon"ble Supreme Court by an order dated 8th August, 2005. 3. The Hon"ble First Court has further held in the order dated 2nd

May, 2006 that the Hon"ble Supreme Court did not reserve her liberty to apply before the Hon"ble First Court after dismissal of her application. It

may be perhaps appropriate to refer to the order dated 2nd May, 2006 in its entirety. The same is set out herein below:

The Court: One Ashok Kumar Gupta suffered a decree dated August 21, 1998 in Hyderabad Court for a sum of Rs. 20.91 lakhs approximately.

The decree was transmitted to this Court for execution. Thereafter series of litigations were initiated by this Court at the instance of the said Ashok

Kumar Gupta either through his wife or his mother or through the new company set up by him to avoid the execution of the decree.

The present application is one of such applications made by his mother. She claims to be the owner of Flat Nos. 6, 7, 8 and 9 of premises No. 12.

Loudon Street Calcutta- 700 017, which are under possession of the Receiver. The Receiver has already sold the said flats in a public auction

subject to confirmation of this Court. I have not yet confirmed the sale.

Ms. Tapati Ghosh, learned Advocate, appearing for the applicant, submits that her client purchased these flats in 1977. She allowed her son to use

these flats for running his business. She has not, however, granted any tenancy right to his son or to his business concern.

Earlier the new companies set up by the judgment debtor claimed tenancy of these flats in question under the applicant before me. Neither the

applicant did object at that stage nor claimed any ownership as recorded by the Apex Court in the judgment and order dated September 26, 2005

in Civil Appeal Nos. 5893-5894 of 2005. The said judgment of the Apex Court has been annexed to the Affidavit-in-Opposition filed by the

decree holder appearing at pages 22-29 thereof.

In page 27 of the said affidavit being internal page six of the said judgment of the Apex Court it was recorded, ""at no point of time she had pressed

a claim of being the owner of the property.

Ms. Ghosh, appearing for the applicant, submits that in Order 21 Rule 100 of the CPC the Executing Court is the appropriate Court to adjudicate

her right. She was mis-advised while approaching the Apex Court. Now, she has approached this Court under Order 21 Rule 100 of the CPC

and I should independently examine her right over the property in question irrespective of finding of the Apex Court.

In support of her claim she submits that payments were made in respect of the flats in question in phases by her and/or her husband and her son

has no right, title and interest over any of the flats in question which could be sold in execution of a decree suffered by her son.

I have perused the application. I am convinced that this is another attempt made by the judgment debtor through his mother to avoid the decree

which he suffered.

4. The Apex Court already recorded that the applicant before me never pressed her claim as an owner of the property. Her application for

intervention was dismissed by the Apex Court by another order dated August 8, 2005. In such application, she claimed for identical reliefs. The

Apex Court did not reserve her liberty to apply before me after dismissal of her application by the Apex Court.

The instant application is totally mis-conceived and, as such, is dismissed.

There would, however, be no order as to costs.

Urgent xerox certified copy of this order be made available to the parties, if applied for.

5. In so far as the other impugned order is concerned, that is to say, the order dated 10th May, 2006 it appears that the said order was passed on

an application for sale of the properties of the judgment debtor, wherein Prema Gupta was one of the interested parties who wanted to give her

bid, but prayed for further time to consider as she was not in a position to give her bid at that point of time. The order dated 10th May, 2006 is

also reproduced hereinbelow in its entirety:

The Court: pursuant to the advertisement the Receiver has received three offers. Out of them one offerer has given an offer below the reserved

price and as such the Receiver has rejected his offer. The other two offerers are represented through Advocates before me. The highest offer

received by the Receiver is Rs. 57 lakhs I have granted liberty to the parties to outbid the highest offerer. The decree holder has given offer for a

sum of Rs. 62 lakhs. One of the interested parties being represented by Ms. Tapati Ghosh being the mother of the judgment debtor also wants to

give bid, but she prays for further time to consider as she is not in a position to give her bid right now.

The Receiver is directed to accept the offer given by the decree holder for a sum of Rs. 62 lakhs. Since the offer has been made by the decree

holder the amount is to be adjusted as against the decretal sum. The Receiver is, however, directed not to complete the formalities in favour of the

decree holder till two weeks after the Summer Vacation. Both the judgment debtor as well as Ms. Ghosh's client are given liberty to bring suitable

offer from any outsider to outbid the decree holder. In case any such offer is not received by the Receiver within the stipulated period, the Receiver

would be entitled to complete the formalities with regard to execution of Conveyance in favour of the decree holder by way of adjustment of the

decretal sum. In case the Receiver receives any suitable offer within the stipulated date, he shall bring it to the notice of the Court. The Receiver is,

however, granted liberty to refund the earnest money to the unsuccessful bidders.

All parties concerned including the Receiver are to act on a xerox signed copy of this dictated order on the usual undertaking.

6. It has been contended before us by the learned Advocate appearing on behalf of the appellant that the first impugned order dated 2nd May,

2006 passed by the Hon"ble First Court is bad in law since the Court had not considered the pro interesse suo application of the appellant and the

right, title and interest of the appellant over and in respect of the suit flats remain unexamined. The other aspect of the matter that has been

contended before us is that the order of the Hon"ble Supreme Court dated 8th August, 2005 was a non-speaking order and Prema Gupta's

application for addition of party in the SLP being rejected by the Hon"ble Supreme Court did not preclude her from taking out the pro interesse

suo application before the Hon"ble First Court. The learned Advocate appearing on behalf of the appellant, Prema Gupta, has relied on two

judgments of this Court in order to substantiate his submission with regard to the appellant's right to take out a pro interesse suo application for

consideration of her right, title and interest over and in respect of the suit flats. The judgments relied on are as follows:

1) Union of India (UOI) Vs. Kashi Prosad Agawalla and Others,

2) Central Bank of India Vs. Srish Chandra Guha and Another,

7. The learned Advocate appearing on behalf of the appellant has also relied on the following judgments in order to substantiate the submission that

the non-speaking order dated 8th August, 2005 passed by the Hon"ble Supreme Court rejecting Prema Gupta's application for addition of party

in the SLP did not preclude her from taking out the pro interesse suo application before the Hon"ble First Court. The judgments relied upon are as

follows:

1) Sri Ramnik Vallabhdas Madhvani and Others Vs. Taraben Pravinlal Madhvani,

2) Kunhayammed and Others Vs. State of Kerala and Another,

3) AIR Supp 2005 SC 3708 (paragraph No. 28)

8. On the other hand, the learned Advocate appearing on behalf of the respondents has submitted before us that the appeal was not at all

maintainable far want of bona fides, which, on the part of the appellant, was transparent. It has also been contended before us that Prema Gupta

was none else than the mother of the judgment debtor - Ashok Kumar Gupta and was pretending that she was not aware of the entire earlier

litigation until the matter reached the Hon"ble Supreme Court of India in C.A. No. 5893-94 of 2005.

9. It has been further contended before us on behalf of the respondents that in those civil appeals she had filed on application seeking permission to

come on record as a necessary party, inter alia, pleading that she was the owner of the property in question, i.e., flat Nos. 6, 7, 8 and 9 of No. 12;

Loudon Street; Calcutta; which was, rejected by the Hon"ble Supreme Court.

10. On behalf of the respondent it has also been submitted before us that what all she pleaded before the Hon"ble Supreme Court for the purpose

of being impleaded as a party, has been repeated by her, in substance, before the Hon"ble First Court, as well as before us.

11. Before we proceed to decide the issues as raised in the two appeals, it is necessary to take into consideration certain observations made by

the Hon"ble Supreme Court of India in the order dated 26th September, 2005 passed in civil appeal No. 5893-5894 of 2405, ;which have been

reflected upon by the Hon"ble First Court.

12. It appears that the Hon"ble Supreme Court in the judgment and order dated 26th September, 2005 has, in respect of Mrs. Prema Gupta,

being the appellant herein, inter alia observed as follows:

Respondent No. 1 claimed its tenancy from Mrs. Prema Gupta. Her application to be impleaded as a party in the present proceedings was

rejected. At no point of time she had pressed a claim of being the owner of the property.

13. It is also pertinent to take into account the other observation of the Hon"ble Supreme Court of India in the instant matter, apart from the above

observation pertaining to Prema Gupta. The Hon"ble Supreme Court has, in the order dated September 26, 2005, further observed as follows:

The Division Bench unnecessarily enlarged the scope of the controversy observing that the matter has assumed the proportion of a full blown suit.

It permitted the Execution Court to deal with the matters which are clearly beyond the scope of its adjudication. We, therefore, set aside the

impugned order of the Division Bench and affirm that of the learned single Judge of the High Court.

14. It may also be worthwhile to take note of some statements made by Prema Gupta in her affidavit filed before the Hon"ble Supreme Court in

response to the show-cause dated 20.12.06 issued by the Hon"ble Supreme Court. The statements appear in paragraphs 5, 6, 7 and 8 of the said

affidavit, which are reproduced hereinbelow:

5. I tender my unconditional apology for the language used in paragraph 10(z) of the application for stay being G.A. No. 1473 of 2006, in

A.O.P.T. No. 222 of 2006 {Prema Gupta v. TCI Finance Limited and Anr.) filed before the Hon"ble High Court at Calcutta which forms part of

the Paper Book, (Volume-II pages 117-118) filed before this Hon"ble Court. I crave leave of this Hon"ble Court to delete and/or amend the

same.

6. The aforesaid application for stay (Volume-II pages 100 to 127) was drafted by my counsel I did not fully understand the purport thereof had I

realized the meaning and purport of the language used therein, I would have taken immediate steps to drop and/or amend the same, then and there.

I again tender my unqualified and sincere apology for the language and in para 10(z) of the said application for stay filed before the Hon"ble High

Court.

7. All that I intended to say in the aforesaid paragraph 10(z) of the said application for stay (filed before the Hon"ble High Court) was, that the

application for addition of party which was filed by me before this Hon"ble Court in the SLP filed by the plaintiff/decree holder TCI Finance Ltd.,

was dismissed by a non-speaking order. This Hon"ble Court may kindly appreciate that the very objectionable sentence also contains the

expression ""reason"". My knowledge of English language is not that good and hence, I could not point out to my learned Advocate, who had

drafted the application, to omit the words "and/or explanation", which I sincerely regret and for which I again tender my unconditional apology.

Considering my age and being only a house-wife, this Hon"ble Court may kindly forgive me for my unintended lapses.

8. A Constitution Bench of this Hon"ble Court in the case of Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another, has

held that proceedings pro-intersee suo to be one of the remedies available to a stranger in respect of whose property, a receiver is appointed by

Court of law. I was advised to approach the Hon"ble Court with an application in the pending execution proceedings inter alia, praying for

proceedings in pro-intersee suo and hence, I had approached the Hon"ble High Court.

15. The statements of Prema Gupta, as appearing in paragraph 10(z) of the application for stay, being G.A. No. 1473 of 2006, filed before this

Court, which was taken note of by the Hon"ble Supreme Court, is also reproduced hereinbelow:

The said application for addition of party filed by your petitioner before the Hon"ble Supreme Court came up for hearing on 8th August, 2005

when the Hon"ble Supreme Court was pleased not to allow the said application. The order dated 8th August, 2005 passed by the Hon"ble

Supreme Court thereby dismissing the said application was not supported by any reason and/or explanation. A copy of the said order dated 8th

August, 2005 passed by the Hon"ble Supreme Court thereby dismissing the said application is annexed hereto and marked with the Letter ""O"".

16. We are also not unmindful of the fact that Prema Gupta, being the mother of the judgment debtor - Ashok Kumar Gupta, never, at any point of

time, came to press her claim, which fact has been taken note of by the Hon"ble Supreme Court as well as by the Execution Court in the order

dated 2nd May, 2006.

17. The Calcutta High Court decision reported in Union of India (UOI) Vs. Kashi Prosad Agawalla and Others, , which has been relied on by the

learned advocate appearing on behalf of the appellant Prema Gupta in the case of Union of India v. Kashi Prosad Agawalla and Ors. (supra) has

been rendered in a completely different fact - situation and has no manner of application at all in the facts and circumstances of the instant case.

18. The only part of the said judgment that may be relevant in the instant case is with regard to the definition of the Latin expression, "pro interesse

suo", as appearing in paragraph 18 of the said judgment, which is reproduced hereinbelow:

The latin expression pro interesse suo means in the English language for his own interest; these words are used, especially of a party allowed to

intervene for his own interest in a proceeding instituted between other parties.

19. The other judgment of our High Court reported in Central Bank of India Vs. Srish Chandra Guha and Another, also deals with rights of person

examined pro interesse suo. Paragraph 9 of the said judgment is reproduced hereinbelow:

A proceeding in pro interesse suo is not provided for either in the CPC or in the Rules of the Original Side of this Court. This is a procedure

imported into this country from England. In order to do justice to a person, the Court allows that person to come in and be examined as to his title

to the goods or property over which the Court has appointed Receiver in a proceeding between persons other than the said person. That is done

so that no person may suffer because of any order that may be passed by the Court. It is the right in such a proceeding of that person who claims

to be the owner of the goods or property to be examined as to his title to the said goods or property. It is in that sense a personal right of that

person only. That person cannot in my opinion in such a proceeding ask the Court to examine some other person with regard to that person's right

or title in the goods or property over which the Court has appointed a Receiver.

20. In the facts of the instant case, however, we find that the observations made by Ghose, J, as reproduced hereinabove; cannot be applied, in

view of the observation of the Hon"ble Supreme Court in the order dated 26th September, 2005, wherein it has been expressly recorded that

Prema Gupta never pressed her claim as the owner of the property. We also take note of the fact that the judgment debtor - Ashok Kumar Gupta

and his mother Prema Gupta stay in the same building, i.e., 12, Loudon Street, Kolkata-700 017, which appears from the cause-title of the stay

application of Prema Gupta itself, being G.A. No. 1473 of 2006. Thus, the contention of Prema Gupta, made in her pro interesse suo application,

which was filed sometime in the year 2006 in the pending execution proceeding before the Hon"ble First Court, that she came to know about the

decree of 1998 passed by the Hyderabad Court and the on-going execution proceeding before the Hon"ble First Court, for the first time, only

when the Receiver appointed by the Court came to take symbolic possession over the suit premises on 11th April, 2003, is wholly unacceptable.

21. In so far as the judgments of the Hon"ble Supreme Court relied on by the learned Advocate appearing on behalf of the appellant in respect of

the order dated 8th August, 2005 being a non speaking order of the Hon"ble Supreme Court, there is no necessity for us to deal with the same in

view of the fact that the appellant Prema Gupta, not having pressed her claim of being owner of the property at any point of time - which fact has

also been noted by the Hon"ble Supreme Court in the order dated 26th September, 2005 could not be allowed to have her purported right over

the flats in question to be adjudicated upon by the Hon"ble First Court, sitting as the execution Court, which in our opinion, will only tantamount to

frustrating the respondent's right to have the decree dated 21st August, 1908 executed in accordance with law.

22. In view of the reasons stated above, there is no necessity for us to interfere with the two impugned orders, being orders dated 2nd May, 2006

and 10th May, 2006, and the two appeals stand accordingly dismissed.

Pinaki Chandra Ghose, J.

23. I agree.

Later:

After the order is pronounced, the learned Advocate appearing on behalf of the appellant prays for stay of this order for four weeks. Accordingly,

stay is granted for a period of four weeks from date.