

**(2010) 08 CAL CK 0089**

**Calcutta High Court**

**Case No:** C.O. No"s. 2067 and 2096 of 2008

Eastern Circle yellow Pages Pvt.  
Ltd.

APPELLANT

Vs

Dr. Amal Kr. Ghosh

RESPONDENT

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**Date of Decision:** Aug. 26, 2010

**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 11, 151

**Citation:** (2010) 4 CALLT 587 : (2011) 4 CHN 306

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

**Bench:** Single Bench

**Advocate:** Priyabrata Ghosh, for the Appellant; Hiranmoy Bhattacharyya, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Prasenjit Mandal, J.

These two applications have arisen out of the order No. 12 dated April 25, 2008 and order No. 11 dated March 27, 2008, passed by the learned Civil Judge (Senior Division), Second Court at Barasat upon an application under Order 21 Rule 11 of the CPC and u/s 151 of the C.P.C. respectively relating to delivery of possession in favour of the decree holder in Title Execution Case No. 3 of 2007 arising out of the Title Suit No. 59 of 2004.

2. Since the same question of law is involved in the two matters, the two applications are disposed of by this common judgment.

3. The short fact of the case is that the plaintiff/opposite party/decreed holder filed the Title Suit No. 59 of 2004 for eviction against the tenant/defendant/petitioner herein from the suit premises, as described in the schedule of the plaint, in the Court of the learned Civil Judge (Senior Division), Second Court, Barasat. That suit was decreed ex parte against the defendant with costs on October 26, 2006. The

defendant was directed to vacate and deliver the peaceful possession of the suit premises in favour of the plaintiff within six months from the date of the order, failing which the plaintiff will be at liberty to put the said decree into execution.

4. The contention of the defendant/petitioner is that before passing the said decree on October 26, 2006 actually he delivered vacant possession of the suit premises in favour of the plaintiff/decree holder on January 31, 2006 and such delivery of possession was duly taken by the decree holder. The defendant/petitioner had also intimated the plaintiff that peaceful and vacant possession was delivered on that day by a registered letter with an acknowledgement due card. That acknowledgement due card was returned to the defendant/petitioner with an endorsement of the plaintiff/decree holder

5. Not only that, by swearing an affidavit, the petitioner had informed that the defendant had delivered vacant possession of the suit premises on January 31, 2006 and had handed over the vacant possession of the same. In spite of that fact, the learned Trial Judge passed an ex parte decree for recovery of possession with costs. The petitioner filed an application to drop the execution application. But the learned Trial Judge rejected the application by the order No. 11 dated March 27, 2008. He also noted in the said impugned order that the execution case shall proceed as usual. Thereafter by the next order No. 12 dated April 25, 2008 he issued direction upon the bailiff to execute the writ of delivery of possession by breaking open the padlock. Being aggrieved, the judgment debtor/petitioner has preferred these two applications.

6. The question is whether the impugned orders can be sustained.

7. Upon hearing the submission of the learned Advocate of both the sides and on perusal of the materials on record and also the entire copy of the order sheet of the Title Execution No. 3 of 2007 as supplied by Mr. Bhattacharya, I find that the petitioner has filed the xerox copy of the letter dated January 31, 2006, copy of the postal receipt and the acknowledgement due card collectively marked as B series to prove that on January 31, 2006 the petitioner had delivered vacant possession of the suit premises in favour of the plaintiff. Not only that, before delivery of possession, the petitioner wrote letters to the Calcutta Telephones on January 27, 2006 intimating that all the telephone connections of the suit premises standing in his name should be disconnected since he was going to deliver possession of the suit property by the end of January, 2006. The commercial officer, Bidhannagar took necessary actions on those letters marked exhibit C series collectively.

8. Not only that the petitioner asked the West Bengal State Electricity Board to disconnect electric supply to the suit premises and the copy of such letter has been marked as annexure D to the application.

9. Though the plaintiff/landlord received the letter marked exhibit B series, he did not raise any objection or protest.

10. The delivery of possession was taken by the caretaker of the premises at the instance of the opposite party on January 31, 2006 and this is, I hold, sufficient compliance with regard to the delivery of possession by a tenant in favour of the plaintiff.

11. In spite of that, the opposite party filed the application for execution of the decree being number as Title Execution Case No. 3 of 2007. Upon getting a notice of the execution application, the petitioner deposited the decretal amount of Rs. 18,272/- in May, 2007 by way of challan bearing No. 8443. The decree was for delivery of possession and costs. Since the decree has been fully satisfied with deposit of the decretal dues, the decree holder cannot have any other claim. It is not at all a decree for mesne profits. The decree holder is not also entitled to have any claim against the defendant/judgment debtor since after delivery of possession on January 31, 2006.

12. Under the circumstances, I am of the view that the learned executing court has committed a wrong in rejecting the petition of the petitioner with observation that the execution case shall proceed in accordance with law. For the same reason, the order for delivery of possession by breaking open the padlock cannot be supported. Decree as passed by the learned Trial Court having been fully satisfied, since no other claim is made by the decree holder in the instant application for execution of the decree, I am of the view that continuance of the execution case cannot be supported. The orders impugned cannot also be supported at all and so the impugned orders should be set aside.

13. Accordingly, the two applications succeed. They are allowed. The orders impugned are hereby set aside.

14. There will be no order as to costs.

15. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.