

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

LAST HEARD ON: 24.09.2025

DELIVERED ON:07.04.2026

PRESENT:

THE HON'BLE MR. JUSTICE BISWAROOP CHOWDHURY

I.A. No. GA 5 of 2025

IN

C.S. No. 223 of 2013

IN

E.C. No. 520 of 2019

Shivani Properties Private Limited VS Rajeev Lochan

Appearance:

Ms. Manali Bose, Adv.

Ms. Tutul Das Singh, Adv.

Mr. Ranjit Singh, Adv.

Ms. Pooja Sett, Adv.

**... for the judgment-debtor (applicant in GA/3/2022 & respondent in
GA/2/2022)**

Mr. Avinash Kankani, Adv.

Mrs. Aunima Lala Sengupta, Adv.

Mr. Suman Majumder, Adv.

... for the decree-holder (applicant in GA/2/2022 & respondent in GA/3/2022)

This is an application under Order XXI of the Code of Civil Procedure 1908 filed by the Decree-holder with the following prayer.

- a) Recovery of mesne profit from the judgment debtor from July 2013 to March 2025, a sum of Rs. 63,21,651/- as particularly mentioned in paragraph No. 8 of the affidavit in support of this Masters Summons along with future mesne profit until delivery of vacant possession of the said premises to the decree holder.
- b) Recovery of interest on mesne profit from the judgment debtor to payment of interest on mesne profit from July 2013 to March 2025 a sum of Rs. 20,85,849.36/- as particularly mentioned in paragraph No-8 of the affidavit in support of this Master's summons until delivery of vacant possession of the said premises to the decree holder.
- c) An order be passed directing the judgment debtor to mesne profit with interest till the date of handing over the physical possession of the said premises morefully described in schedule 'W', 'X', 'Y' and 'Z' of this affidavit in support of this Master's summons which are all located at premises No. 5, Kiran Shankar Roy Road Kolkata-700001.

- d) A fit or proper person be appointed Receiver in this matter and be directed to take physical possession of the assets and properties mentioned in schedule of Assets of the affidavit in support of this Master's Summons.
- e) The receiver be further directed to sell the said assets and properties mentioned in the said inventory list by way of private treaty or public auction and hand over the sale proceeds thereof to the decree holder in pro-tante satisfaction of the said final decree dated January 25, 2018.
- f) An order of injunction be passed restraining the judgment debtor from selling and/or disposing of and/or alienating and/or dealing with in any manner the said properties and assets mentioned in the schedule of Assets of the said affidavit in support of this Master's Summons;
- g) The properties and assets mentioned in the schedule of Assets of the said affidavit in support of this Master's summons be attached;
- h) In the event any obstruction or interference is caused by the judgment debtor to the Learned Receiver from carrying out the directions of this Hon'ble Court an order be passed directing the local police authorities to ensure that the Learned Receiver is able to carry out his duties.
- i) An order be passed directing the judgment debtor to appear before this Hon'ble Court to be orally examined as to whether any or what debts are owing to the judgment debtor and whether the judgment

debtor has any or what properties or means for satisfying the said decree.

- j) In the event, the judgment debtor fails to attend this Hon'ble Court as directed above a warrant be issued for their arrest and they be directed to show cause as to why they should not be committed to civil prison for such term as this Hon'ble Court may deem fit and proper.
- k) In the event the judgment debtor fails to attend this Hon'ble Court as directed above a warrant be issued for their arrest and they be directed to show cause as to why they should not be committed to civil prison for such term as this Hon'ble Court may deem fit and proper.
- l) An order of injunction be passed restraining the judgment debtor from disposing of encumbering alienating and/or dealing with in any manner whatsoever with all his assets and properties including those which will be revealed by the said judgment debtor in his affidavit of assets to be filed before this Hon'ble Court.
- m) In the event, further assets and properties of the judgment debtor are made known before this Hon'ble Court by the judgment debtor in the course of this proceedings the Receiver to be appointed herein be directed to take possession of the same and sell the same by way of public auction or private treaty and hand over the sale proceeds thereof to the decree holder;

- n) An order be passed directing the issuance of notice under Order XXI Rule 41 of the Code of Civil Procedure to the judgment debtor;
- o) Ad-interim orders in terms of prayers above.
- p) Costs of and/or incidental to this application be paid by the judgment debtor;
- q) Further and/or other order or orders be passed and/or direction or directions be given as this Hon'ble Court may deem fit and proper.

The contention of the plaintiff/deed holder may be summed up thus;

- i) On January 24, 1994 the plaintiff qua decree holder purchased the immovable properties more fully described in schedules 'W', 'X', 'Y' and 'Z' hereunder which are all located at premises no-5 Kiran Shankar Roy Road Kolkata-700001 from Dipali Mallick by a registered deed of conveyance. Since then the plaintiff is the absolute owner of the said premises. The description of the said premises mentioned for which eviction has been granted in C.S. No. 223 of 2013 is same and identical to Schedules 'W' comprising an area of 191 sq. ft, 'X' comprising an area of 108 Sqft. 'Y' comprising an area of 20 sq. ft. and 'Z' comprising an area of 150 sq.ft. of the plaint filed in the suit.
- ii) Originally one Sumitra Devi Poddar was the tenant of Dipali Mallick with respect to the rooms described in schedules 'W' 'X' and 'Y'. Dipali Mallick had attorned the tenancy of Sumitra Devi

Poddar in respect of the three rooms of the said premises in favour of the plaintiffs by three several letters dated January 24 1994.

- iii) In May 2013, the plaintiff discovered that Sumitra Devi Poddar had permanently left the said premises and the same was unlawfully occupied by the defendant.
- iv) The plaintiff being aggrieved by the act of the defendant being in unlawful occupation of the property above-mentioned filed a suit for eviction of the defendant being C.S. 223 of 2013.
- v) The Suit C.S. 223 of 2013 was disposed by Judgment and decree dated January 25, 2018 in favour of the plaintiff with a direction of eviction upon the defendant. It was further directed that the plaintiff is entitled to mesne profit and two Special Refrees were appointed to determine the mesne profits for the defendants occupation since the date of filing of the suit till the date of delivery of possession by the defendant based on the prevailing market rate. The Hon'ble Court granted interest @9% per annum over the total amount of mesne profit and also awarded costs of Rs. 1,50,000/- payable by the defendant.
- vi) An appeal was preferred by the Defendant/Judgment Debtor being APD-209 of 2018 which was dismissed.
- vii) The Learned Special Refrees who were appointed under the first Judgment and decree determined the mesne profits for the defendant's occupation by submitting report dated January 18,

2021 and an application was filed for treating the said report as part of the judgment and decree dated January 25, 2018. By an order dated August 11, 2022 the said application being G.A. No. 2 of 2022 was allowed and it was directed that the said report be made a part of the judgment and decree dated 25-12-2018.

viii) Thereafter Order dated August 11, 2022 was modified by incorporating therein the mesne profits by observing as follows:

'12. It is further considered that in the usual course the rentals are increased at the rate of 10% every three years and as such for the purpose of calculating the quantum of mesne profit the market rentals in respect of the property under reference as follows:

- a) January 2021 till further 3 years Rs. 105 per sq. ft per month.
- b) January 2017 to December 2020 Rs. 95 per sq. ft. per month.
- c) January 2014 to December 2016. Rs. 86 per sq. ft. per month.
- d) July 2013 to December 2013. Rs. 78, per sq. ft. per month.

13. In spite of demands and requests being made on behalf of the decree holder the defendants/judgment debtors have neither vacated the said premises nor made any payment to the decree holder apropos mesne profits pursuant to the said final judgment and decree dated January 25, 2018.

2. There is no legal impediment to the said final judgment and decree being executed by this Hon'ble Court.

3. In respect of mesne profits and interest as on March 31, 2025 there is due and owing to the said judgment debtor a sum of Rs. 84,07,500 as per the following particulars:

1. Mesne profits @78/- per sq. ft. per month from July 2013 to December 2013 for an area of 469 sq. ft.

2. Mesne profits @Rs. 86/- per sq. ft. per month from January 2014 to December 2016 for an area of 469 sq. ft.- Rs. 14,52,024/-.

3. Mesne profits @Rs.95 per sq. ft. per month from January 2017 to December 2020 for an area of 469 sq. ft. Rs. 21,38,640/-.

4. Mesne profits @Rs. 105/- per sq. ft. per month from January 2021 to March 2025 for an area of 469 sq. ft.

Gross total – Rs. 63,21,651/-

Interest @9% p.a. as per decree dated 25-01-2018 – Rs. 20,85,849.36/-

Net Total (July 2013 – March 2025). – Rs. 84,07,500/-.

5. The Judgment debtor is in possession of and owns certain assets and properties wherefrom their decreed debts can be recovered. The particulars whereof are as follows:

Flat 103/C/2, Flower Valley Complex 493/B G.T. Road
Shibpur District-Howrah PIN-711102.

6. The Judgment Debtor continues to be in wrongful possession of the said properties and the decree holder reasonably apprehends that the said premises may be transferred alienated by the judgment debtor, thus a fit and proper person be appointed Receiver to take physical possession of the premises and hand over vacant possession thereof to the decree holder.

7. It is necessary and proper that an order of injunction be passed restraining the defendant and his men and agents from selling and or disposing of and/or alienating schedule of Assets to the instant application.

8. The Judgment Debtor be directed to file affidavit of assets belonging to the Judgment Debtor.

The Judgment Debtor/Defendant filed affidavit in opposition to the petition of Decree holder/plaintiff denying the allegations made in the application.

It is contended by the Judgment debtor that the application is beyond the scope of main execution case as the judgment and decree dated 25th January 2018 did not provide any quantified decree as to mesne profits. The execution petition was filed in 2019, seeking execution of the said judgment and decree where no amount of mesne profits was made payable by the judgment debtor.

It is further contended that no question of mesne profits being payable by the judgment debtor can arise in view of the suit property having been under the possession of Usha Devi and not under his occupation. The judgment and decree was carried up in appeal by him and by an Order dated 16th August 2022, the Hon'ble Division Bench clarified that the judgment and decree stood affirmed as it bound the judgment debtor. The judgment and decree is unenforceable insofar as mesne profits are concerned against him since he has never been in occupation of the suit property from institution of the suit till date. It is also contended that no modified decree is sought to be relied upon by the decree holder forming part of the main execution case, nor has any modified decree been drawn up or completed by the Department. The application at this stage is untenable.

The judgment debtor with regard to paragraphs 1 to 7 of the application has denied and disputed the same. It is contended that the Orders dated 11th August 2022 as 16th December 2022 cannot be enforced in the interlocutory application in the main execution case as alleged. It is contended that appropriate steps are being taken to challenge the purported orders dated 11th August 2022 and 16th December 2022.

The judgment debtor has denied that the judgment debtor is occupying any part of the building described in schedule 'Z' as alleged or at all. He has further denied that he is a trespasser in respect of the suit premises as alleged. He has also denied that the plaintiff is being deprived of any profit on account

of the defendant or that the plaintiff is entitled to recover any mesne profit or damages from the defendant as alleged. It is contended that the report of the special Referees are denied, and the said report is vitiated by violation of principles of natural justice. The plaintiff has not taken any steps for obtaining modified decree as sought to be relied on by the plaintiff.

With regard to the contentions made in paragraphs 8 to 31 of the application the Judgment Debtor/Defendant has denied the allegations made therein. The Judgment Debtor has denied that any part of the alleged sum of Rs. 84,07,500/- is or can be said to be due or owing to the decree holder from the judgment debtor as alleged or at all. He has denied that the judgment debtor is seeking to obstruct or delay the execution of the decree or is about to dispose of his assets or properties as alleged or at all.

The Judgment Debtor has prayed for dismissal of the application.

The Decree holder/plaintiff has denied the allegations made in the affidavit in opposition by filing affidavit in reply. It is contended that the judgment debtor cannot re-argue its case and cannot go beyond the decree. It is further contended that no reliance can be placed upon the written statement in an execution proceedings. It is also contended that this Hon'ble Court has clearly held that Rajeev Lochan is in occupation of the suit premises and is bound to pay the mesne profit.

With regard to paragraph 11 to 13 of the affidavit in opposition the Decree holder contends that judgment debtor cannot go beyond the decree. It

is further contended that the report of the Learned Special Referee is final and the same has been accepted by this Hon'ble Court. The judgment debtor did not challenge the same and hence cannot make submission of same in execution proceedings.

Heard Learned Advocate for the Decree-holder and Learned Advocate for the Judgment Debtor. Perused the materials on record.

Learned Advocate for the Decree Holder submits that one Sumitra Devi Poddar was the tenant in respect of a shop being room no-2 at the ground floor of the said premises comprising 191 sq. Ft. approximately at the monthly rental of Rs. 115/- payable according to the English calendar month. Similarly she was also the tenant of another shop room at the ground floor of the said premises at the Northern Gate comprising 108 sq. ft. approximately at the monthly rental of Rs. 115/- payable according to the English calendar month. The said Sumitra Devi Poddar was also a tenant in respect of a room on the terrace of the said premises comprising 150 sq. ft. and approximately at the monthly rental of Rs. 58/- payable according to the English Calendar month.

Sometime in May 2013 it came to the knowledge of the decree holder that the said Sumitra Devi Poddar has left the said premises permanently and is not enjoying the premises in any manner whatsoever. The judgment debtor herein had been in exclusive physical possession of three rooms as mentioned above at the said premises and had been enjoying the same illegally being liable to be evicted. The judgment debtor also had been in illegal occupation of a privy at

the ground floor at the main gate of the said Premises comprising 20 sq. ft. Learned Advocate also submits that the Decree-Holder being aggrieved by the acts of judgment debtor filed suit for eviction before this Court being C.S. No-223 of 2013 for eviction of the Judgment Debtor which was disposed by judgment and decree dated 25th January 2018. The judgment debtor was held to be a trespasser in the said premises and it was held that the plaintiff/decree holder is entitled to decree for recovery of possession of the said premises as mentioned in the schedule of the plaint. The plaintiff was held to be entitled to mesne profits which could not be readily assessed at the time of the decree and for such purpose this Court appointed Joint Special Officers to determine the mesne profit. The Learned Special officers upon conducting enquiry submitted report, and the report with regard to mesne profit was incorporated as part of the judgment and decree dated 25th January 2018.

Learned Advocate for the decree holder submits that the bone of contention raised by the judgment debtor is that the present application is beyond the scope of execution case as the modified decree is sought to be relied upon in the main execution case which is not tenable in the eye of law. Learned Advocate relies upon the modified drawn up decree at pages 34 to 42 of the application and submits that the said drawn up and completion of decree has been done by the Department of this Hon'ble Court as per the decision contained in the order dated 11th August 2022.

There are no procedural latches that were established in the present case.

Learned Advocate further submits that the decree was drawn up in furtherance to the decree dated 25th January 2018, wherein Learned Special Refrees were appointed for the purpose of determination of mesne profits as permissible under Order XX Rule-12 of the Code of Civil Procedure 1908. Learned Advocate also submits that the order dated 11th August 2022 modified by the order dated 16th December 2022 could not have been passed without the judgment and decree dated 25th January 2019. This Hon'ble Court has already directed modifications of the judgment and decree by way of orders dated 11th August 2022 and 16th December 2022 and subsequently the final decree was drawn up and completed accordingly. Learned Advocate further submits that the judgment debtor has failed to establish violation of any provision of law or any procedural latches and have opposed the present application only as a dilatory tactic. Learned Advocate also submits that the Execution case be allowed.

Learned Advocate for the Judgment Debtor submits that GA 5 is an interlocutory application in an execution case being E.C. No. 520 of 2019. An execution case in accordance with the Order XXI Rule 11 of the Code of Civil Procedure 1908/hereinafter for the sake of brevity referred to as the 'CPC 1908') is filed in relation to a decree dated 25th January 2018 passed by this Court in C.S. 223 of 2013. The Applicant is trying to execute a subsequent

decree in an interlocutory application in an execution case which relates to a different decree dated 25th January 2018.

Learned Advocate relies upon the provisions contained in Order XXI Rule 11 and Order XX Rule 12 of the Code of Civil Procedure and submits that in view of the clear provisions of the CPC one execution application has to be filed for each decree. There cannot be more than one decree executed in one execution case. The cause title of the present execution case and the Tabular Statement (which is the main execution application) relates to only the 2018 decree and not the subsequent final decree in respect of mesne profits. Thus G.A. 5 is squarely outside the scope and ambit of the present execution case.

Learned Advocate further submits that CPC 1908 particularly provides that when an enquiry as to mesne profit is directed the Court passing the decree has to pass a subsequent final decree which is akin to a partition suit. The preliminary decree herein is the decree dated 25th January 2018 passed by this Court in C.S. 223 of 2013.

Learned Advocate also submits that even assuming decree holder's case to be correct the subsequent order/decree dated 16th August 2022 is a subsequent decree under Order XX Rule 12 of the CPC-1908 and is required to be executed independently.

Before proceeding to decide the material in issue at the outset it is necessary to consider the Judgment and Decree dated January 25, 2018 and Order dated August 11, 2022 and 16th December 2022.

By Judgment and Decree dated January 25, 2018 it was observed as follows:

In answering the ISSUE Nos. 4 to 5 it is held that the defendant is a trespasser in the suit premises and he is liable to be evicted therefrom. Consequently the plaintiff is entitled to a decree for recovery of possession in respect of the suit premises as mentioned in the schedule. The plaintiff is also entitled to a mesne profit which cannot be readily assessed and for the purpose this Court appoints Ms. Anjusree Mukherjee, Advocate Bar Association and Mr. Soumyajit Ghosh Advocate Bar Library Club jointly as Special Refrees to determine the mesne, profit for the defendant's occupation over the suit premises since the date of filing of the suit till the date of the delivery of possession by the defendant on the basis of prevailing market rate. The Special Refrees will be entitled to a remuneration for Rs. 35,000/- (Rupees Thirty Five Thousand) only each to be borne by the decree-holder alone at the first instance. The parties will render all possible assistance to the Special Refrees to complete the quantification of mesne profits. The decree-holder shall also bear the costs and expenses of the Special Refrees in conducting the reference.

So far the claim of interest is concerned the decree-holder will be entitled to an interest @9% per annum over the total amount of mesne profit.'

Thus from the Judgment and Decree dated January 25th 2018 it is clear that decree was awarded both for eviction of the defendant as well as for mesne profit, only the mesne profit could not be quantified but interest on mesne

profit was also fixed in the said decree. Joint Special Refrees were appointed to enquire about mesne profit and submit a report.

Pursuant to submission of report by Joint Special Refree an application being GA-2/2022 was moved for treating the report by Joint Special Refree dated 18th January 2021 as part of the Judgment and decree dated 25th January 2018, which was allowed by the following Order on August 11, 2022.

‘Accordingly the application GA-2/2022 is allowed.

The report of the Joint Special Refrees dated 18th January 2021 be made a part of the judgment and decree dated 25th January 2018.

The concerned department is directed to draw up and complete the decree accordingly.’

Thereafter an application being GA-4/2022 was moved by the Decree-holder with a prayer that the order dated 11th August 2022 be modified by incorporating therein the portion of the mesne profits as mentioned in the report of the Joint Special Refrees.

The said application GA-4/2025 was allowed by the following order dated 16th December 2022.

‘Accordingly the application is allowed. Let the order dated 11th August 2022 be modified by incorporating therein the mesne profits as delineated at paragraphs 12 and 13 of the report of the Joint Special Refrees and making it a

part of the decree. However the remaining part of the order shall remain unaltered. Draw up the decree accordingly.’

Now the point for consideration is whether a Separate execution case ought to be filed for enforcing mesne profit.

In order to consider this issue it is necessary to deal with Order XX Rule 12, and Order XXI Rule 11.

Order XX Rule 12 of the Code of Civil Procedure provides as follows:

Order XX Rule 12 Decree for possession and mesne profits – 1) Where a suit is for the recovery of possession of immoveable property and for rent or mesne profits, the Court may pass a decree-

- a) for the possession of the property.
- b) for the rents which have accrued on the property during the period prior to the institution of the suit or directing an enquiry as to such rent.
 - ba) for the mesne profits or directing an inquiry as to such mesne profits;
- c) directing an inquiry as to rent or mesne profits from the institution of the suit until-
 - i) the delivery of possession to the decree holder.
 - ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court or,

iii) the expiration of three years from the date of the decree whichever event first occurs.

2) Where an enquiry is directed under clause (b) or Clause (c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

Order XXI Rule 11 provides as follows:-

Order XXI Rule-11 1) Where a decree is for the payment of money the Court may on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment, debtor prior to the preparation of the warrant if he is within the precincts of the Court.

2) Written application-Save as otherwise provided by sub-rule (1) every application for the execution of a decree shall be in writing signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case and shall contain in a tabular form the following particulars.

a) the number of the suit.

b) the names of the parties.

c) the date of the decree.

d) whether any appeal has been preferred from the decree;

e) whether any and (if any) what payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree.

f) whether any and (if any) what previous applications have been made for the execution of the decree the dates of such applications and their results.

g) the amount with interest (if any) due upon the decree or other relief granted thereby together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed.

h) the amount of the costs (if any) awarded;

i) the name of the person against whom execution of the decree is sought; and

j) the mode in which the assistance of the Court is required whether-

i) by the delivery of any property specifically decreed;

ii) by the attachment or by the attachment and sale, or by the sale without attachment of any property.

iii) by the arrest and detention in prison of any person.

iv) by the appointment of a receiver;

v) otherwise, as the nature of the relief granted may require.

3) The Court to which an application is made under sub-rule (2) may require the applicant to produce a certified copy of the decree.

As an Executing Court cannot go beyond the 'Decree' passed in the suit or proceedings this Court while exercising jurisdiction to execute the decree cannot go beyond the decree.

As relied upon by Learned Advocate for the Judgment Debtor about the contents in Execution Application as per Order XXI. Rule 11 of the Code of Civil Procedure the Learned Advocate cannot satisfy as to how the application is defective, moreso when the Decree holder has sought to enforce decree dated 25th January 2018 passed in C.S. 223 of 2013.

With regard to the submission of Learned Advocate for the Judgment Debtor that the petitioner/Decree holder is trying to execute a subsequent decree in an interlocutory application in an execution case which relates to a different decree which is dated 25th January 2018 such plea cannot be sustained. In the event a separate decree is sought to be enforced Courts have inherent power to consolidate the proceedings in the interest of justice.

As the original decree is modified upon special referee submitting report there cannot be piecemill execution of a decree.

As a decree-holder has to furnish the date of execution of decree in the execution case application and in the instant case date of decree remains the same although it is modified by subsequent order it has to be treated as one Judgment and decree and not a separate decree. It has been held in different Judicial pronouncements that there can be no piecemill execution of decree

and a decree has to be executed in one execution case although there may be amendment in the execution case.

In the case of Ramdas Mukhopadhyay VS Uday Chand Mahatab Bahadur; Reported in AIR-1949 Cal, this Hon'ble Court observed as follows:-

'6. The next question which has been urged is that the decree-holder cannot at his option break up the liability without the consent of the judgment-debtors. There is nothing in law to prevent a decree-holder from giving up part of his claim and executing his decree only for a portion. He certainly cannot split up his claim and ask for separate execution proceedings to be started in regard to each particular portion of the claim, but there is nothing to prevent him from starting execution proceedings with regard to part of the claim provided that he does not proceed with the other part. Subsequently, he is not allowed in law to proceed with the part which was not proceeded with before. Therefore, in the present case, there is nothing in law to prevent the decree-holder from relinquishing one-sixth share of the decretal dues and proceeding with five-sixths of his dues.'

In the case of Kusum Kamini Debi VS Sailesh Chandra Chakravorty reported in 1934 SCC Online Cal 166 this Hon'ble Court observed as follows:

'2. The decree-holder, who is now represented by his legal representatives, the present respondents, obtained a decree on 2-1-1932 in civil suit No. 59 of 1931 in the Court of the Additional District Judge, Raipur for a sum of Rs. 62,759/- with interest till realization at 6 per cent per annum simple. There was

also a decree for costs amounting to Rs. 1,736-10-0. Six days later the decree-holder filed his first application for execution.

We are not made aware, nor is there anything on the record to show, whether interest for the six intervening days was claimed in that execution application. We accordingly cannot say anything about it. That execution was disposed of on 28-4-1936 as partly satisfied.

3. Thereafter a second application for execution was made on 3-7-1936. By this application the decree-holder claimed the principal of the amount then due but added a note to the following effect:

‘The interest has not been charged at present’. This application for execution remained pending for several years because of a stay granted by this Court. The stay was originally granted on 8-10-1940, but in view of miscellaneous civil case No. 151 of 1940 the stay order had to be clarified by this Court and the Division Bench then observed as follows:

‘We are prepared to place on record our view that the ‘execution proceedings referred to in our judgment in Miscellaneous Appeal No. 204 of 1939 will be deemed to pend (and not merely the Collector’s proceeding or the sale of the property will be deemed to pend) so that no fresh application in execution will be necessary should the insolvency proceedings go off.’

It is thus well settled that a Judgment and decree granting different reliefs is to be executed in one execution case. Although execution application can be amended but there cannot be separate execution case for each relief.

The decree holder by filing application GA-5/2025 has sought to amend and consolidate the Execution case E.C. 520/2019 with the said application. As necessary particulars are given which is required in execution case this Court in exercise of inherent power in the interest of justice should proceed with the same and grant necessary relief, by treating GA-5/2025 as an amendment application to E.C. 520/2019.

Thus the decree-holder/petitioner has made out a case for intervention of this Court for grant of reliefs as prayed for.

This application stands allowed in part at this stage. Let there be an order in terms of prayer (d) (f) and (h) of the notice of Master Summons dated 18/03/2025.

For the purpose of taking physical possession of suit property Mr. Subhas Roy Advocate Ph: - 9830955505 and Mr. Santanu Chakraborty Advocate Ph:- 9830213141 are appointed as Joint Special Officers. Learned Special Officers upon receipt of this order shall forthwith proceed to the suit property affix notice and copy of this Order to vacate the suit property within 7 days from date of affixing notice. In the event the suit property is not vacated within 7 days from the date of affixing notice necessary police help shall be obtained to vacate the suit property. Upon the suit property being vacated

report shall be submitted by the Learned Special Officers. In the event there is any obstruction by any person steps shall be taken in accordance, with Law, by obtaining police help.

Learned Special Officer are entitled to a remuneration of 1000 GM each to be paid by Decree Holder. With regard to payment of mesne profits this Court is of the view that although the Plaintiff/Decree holder has made out the case for execution of the decree of mesne profits forthwith but in the interest of justice parties should be granted an opportunity to settle the issue with regard to mesne profit through mediation. Thus Hon'ble Justice Biswanath Somaddar former Chief Justice of Sikkim High Court is appointed as Mediator to resolve and settle the issue of Mesne Profits between the parties. Parties shall appear in mediation proceedings on the dates fixed by Learned Mediator. Learned Mediator is requested to commence mediation proceedings and submit report on or before 19/05/2026.

As this application GA 5/2025 stands disposed but the Execution case 520 of 2019 is pending the report of Learned Mediator and report of Learned Special Officer's shall be submitted before Regular Bench having determination.

The matter be placed before Regular Bench on 19/05/2026 subject to the convenience of the Learned Bench.

(BISWAROOP CHOWDHURY, J.)