

**Tarapada Dey and ors. Vs. Amitava Dey**

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**SooperKanoon Citation :** [sooperkanoon.com/853979](http://sooperkanoon.com/853979)

**Court :** Kolkata

**Decided On :** Jan-19-2009

**Judge :** Biswanath Somadder, J.

**Acts :** [West Bengal Premises Tenancy Act, 1956](#) - Sections 13(1), 14, 17D; ;[Hindu Succession Act, 1956](#) - Section 8; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 47 - Order 21; ;[Constitution of India](#) - Article 227

**Appeal No. :** C.O. No. 3641 of 2007

**Appellant :** Tarapada Dey and ors.

**Respondent :** Amitava Dey

**Advocate for Def. :** J.R. Chatterjee, Sr. Adv., ;Aniruddha Chatterjee and ;Gouri Sankar Pal, Advs.

**Advocate for Pet/Ap. :** Sudhis Dasgupta, Sr. Adv. and ;H.P. Roy Choudhury, Adv.

**Disposition :** Application dismissed

**Judgement :**

**Biswanath Somadder, J.**

1. This is an application under Article 227 of the [Constitution of India](#) in respect of an order bearing No. 57 dated 14th March, 2007, passed by the learned Judge, Second Bench of the City Civil Court at Calcutta in Miscellaneous Case No. 961 of 2006 arising out of Title Execution case No. 48 of 1998.

2. The petitioners in the instant application are the judgment-debtors who are contesting the execution case pending before the learned court below.

3. By the order impugned, the learned court below dismissed the judgment debtors' application dated 20th May, 2006, filed before it under Section 47 of the Code of Civil Procedure, 1908.

4. The facts of the case relevant for the purpose of disposing the instant application, in brief, are as follows::

By a common judgment delivered by the learned trial court, three suits, being Title Suit Nos. 2723/94, 2194/94 and 3558/94, in which the main dispute was between the two branches of a family over control of a business of sale and repair of watches, stood disposed of, against which three appeals were preferred before a Division Bench of this Hon'ble Court by the petitioners No. 1 to 5 herein.

From the observations made in the judgment and order dated 06th October, 2005 passed by the Division Bench of this Hon'ble Court it appears that the dispute revolved round 'M/s. B.K. Dey', the trade name of a proprietary concern, originally belonging to Bijoy Krishna Dey (since deceased), which is being run in a rented shop room from premises No. 15, Mahatma Gandhi Road, Calcutta. The Division Bench of this Hon'ble Court dismissed the three appeals of the petitioner Nos. 1 to 5 herein with the following observations::

Section 14 of the West Bengal Premises Tenancy Act, however as construed by this Court in the case of Debabrata v. Kalyan, does not make sub-letting 'unlawful' per se. so this authority cannot be applied in the facts of the present appeal.

In the subject-controversy, the Tarapada branch in our opinion cannot be allowed to have the Deed of gift invalidated on the ground that if given effect to, it would amount to creation of sub-tenancy or assignment without prior consent of the

landlord. It is the landlord alone who can raise this issue.

There is another aspect of the controversy, however, which requires consideration. The subject of gift, which appears from the schedule to the deed of Gift, is as follows::

under P.S. Muchipara, temporary property in holding No. 15, Mahatma Gandhi Road, Calcutta- 700 019, in the ground floor, one shop-room the width of which is 12 ft. and length is 10 ft. the said shop-room housing the watch shop named B.K. Dey along with the goods, furniture and goodwill of business is the property mentioned in the schedule of this deed and the four boundaries are described below....It is not necessary for our purpose to describe the boundary and we are not doing so.

Thus, four categories of properties are forming subject of the gift, being the shop-room, goods, furniture and goodwill of the business. The tenancy of Bijoy Krishna in respect of the shop-room is guided by the [West Bengal Premises Tenancy Act, 1956](#). In the first place there is no clear and specific mentioned of transfer of the tenancy right in the shoproom by Bijoy in favour of Amitava in the gift deed.(Ext.1).

In fact, in the Complaint of T.S. 2194 of 1994, instituted by Somnath, a specific allegation was made that Bijoy Krishna, in collusion with the landlady was going to transfer the tenancy. This allegation was made in paragraph 6 of the complaint. In his written statement, dated 30th July, 1996, in response to such allegation, Bijoy Krishna specifically averred that he was still tenant in respect of the suit premises, but was ready to abrogate the tenancy right in favour of Amitava. There is no evidence we have been taken through, from where inference can be drawn as regards change of tenancy of the subject shop room subsequently.

Mere intention to abrogate tenancy expressed by the tenant alone, in our view cannot abrogate the tenancy and its incidence outside the ambit of the statute guiding landlord tenant relationship. Till the death of Bijoy Krishna, the tenancy remained with him. The tenancy, with which a third party (being the landlord) is involved, cannot be deemed to have undergone a change by virtue of the execution of the Deed of Gift. In these cases we are not concerned with the effect

of the deed of gift upon the tenancy of the shop-room in the name of Bijoy Krishna. As observed hereinbefore that gift deed in its terms do not contemplate assignment of tenancy of the shop-room. That question will be decided, if raised at all, in an appropriate time in presence of the landlord. Incidentally, it may be observed that if the gift deed is construed as a gift comprising tenancy right in the shop-room vis-a-vis the terms of tenancy agreement between Bijoy and his landlord then at best such part of the gift may be declared invalid because of any statutory bar, if there be any. In such a case also the gift as a whole would not be valid.

We are therefore of the view that the Judgments and Decrees of the Trial Court do not warrant any interference. All the three appeals are, accordingly, dismissed with the observations made hereinbefore in respect of the tenancy of the shoproom in question.

Parties to bear their own cost.

5. The specific contention of the petitioners in the present application is that the learned court below did not take into consideration that the decree-holder's execution application had become non-existent on passing of the appellate decree by the Division Bench of this Hon'ble Court and was, therefore, not maintainable in law. In this regard, reliance has been placed by the learned advocate for the petitioners on the following judgments::

I. Gojer Bros. (Pvt.) Ltd. v. Shri Ratan Lal Singh reported in : [1975]1SCR394 ,

II. Lakshmi Narayan Guin and Ors. v. Niranjana Modak reported in : [1985]2SCR202 ,

III. Syam Mandal v. Satinath Banerjee and Ors. reported in 21 CWN 776.

6. It has also been contended on behalf of the petitioners that it is the duty of the executing court to look into all the proceedings leading upto the decree and not merely look at the decree as it is finally drafted. Learned advocate for the petitioners relied on certain observations of the Division Bench of this Hon'ble Court in the judgment and order dated 06th October, 2005, while it dismissed the

three appeals preferred by the judgment-debtors in respect of the shop room in question to substantiate this point and also relied on the case of Bhavan Vaja and Ors. v. Solanki Hanuji Khodaji Mansang and Anr. reported in : AIR 1972 SC1371 .

7. The learned advocate for the petitioners also submitted that the provision of Section 14 of the [West Bengal Premises Tenancy Act, 1956](#), forbids a tenant to transfer or assign his tenancy rights or any part thereof, without previous consent in writing and no such consent was obtained from the landlord by the original tenant. In this context, the learned advocate for the petitioners relied on the case of Amar Kumar Sen v. Gita Rani Das and Ors. reported in (2005) 13 SCC 83 and further submitted that on the death of Bijoy Krishna Dey, being the original tenant of the disputed shop room, his tenancy right in respect of the disputed shop had devolved, amongst others, upon his sons, i.e. Tarapada, Ranjit, Somnath, Biswanath and Moni (being the judgment-debtors), under Section 8(a) of the [Hindu Succession Act, 1956](#), and not on Amitava, being the decree-holder and the grandson of Bijoy Krishna. Hence, the learned advocate for the petitioners submitted that the execution case was not maintainable and ought to have been dismissed by the learned court below by allowing the application filed by the judgment-debtors under Section 47 of the Code of Civil Procedure, 1908. He finally submitted that in the facts and circumstances of the case, the impugned order is liable to be set aside by this Court in exercise of its jurisdiction under Article 227 of the [Constitution of India](#).

8. On behalf of the decree-holder/opposite party it was submitted that the execution case was filed before the learned executing court on 26th March, 1998 for execution of the judgment and decree dated 29th January, 1998 passed by the learned trial court. It was also submitted by the decree-holder/opposite party that after the dismissal of the three appeals by the Division Bench of this Hon'ble Court, the judgment and decree dated 06th October, 2005, passed by the High Court was filed before the learned executing court along with an application for resumption of the execution proceeding from the stage it was stopped. It was, therefore, submitted that the decree of the learned trial court and the order and decree, as drawn, in respect of the appeals dismissed by the Division Bench of this Hon'ble Court on 06th October, 2005, was adopted by the learned executing

court in execution case No. 48 of 1998, pursuant to the aforementioned application filed before it by the decree-holder. In so far as the contention of the petitioners are concerned with regard to the application for execution of the decree of the learned trial court having become non-existent on passing of the judgment and order by the Division Bench of this Hon'ble Court on 06th October, 2005, it has been submitted that in the execution application, which is in tabular form, the column relating to 'appeal' was answered 'no' since at the time of filing of the execution application in 1998, no notice of appeal dated 23rd March, 1998 was received by the decree-holder and subsequently the Hon'ble High Court, sitting in appeal had had stayed the execution until disposal of the appeals. According to the learned advocate for the decree-holder/opposite party, the decisions reported in (1974) 2 SCC 453 and (1985) 1 SCC 270 cited by the petitioners were clearly distinguishable since those judgments spoke of different decree passed in appeal which were in variation with the decree of the trial court and were in relation to matters of eviction of tenant by the landlord and therefore not applicable at all in the facts of the instant case. It has also been contended by the learned advocate for the decree-holder/opposite party that the assignment of the shop room, even if it was construed as assignment of tenancy, cannot be objected to, by the any third party, in absence of written consent of the landlord and such assignment of tenancy right or sub-tenancy is not barred or bad in law per se, but creation of such sub-tenancy, without written consent of the landlord, was actionable by the landlord alone, by filing of a suit for eviction of the tenanted premises, which was evident from the decision rendered in the case of Debabrata Mukherjee v. Kalyan Kumar Roy reported in 85 CWN 594. The learned advocate for the decree-holder/opposite party further submitted that before the Division Bench of this Hon'ble Court same arguments were made by the learned advocate for the petitioners herein and the Hon'ble Court of Appeal rejected all arguments and the decisions cited and had held that the landlord alone had the right to take steps against such action. The learned advocate also relied on the following judgments on the proposition of law that the executing court cannot go behind the decree::

I. Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman and Ors. reported in : [1971]1SCR66 ,

II. Food Corporation of India v. S.N. Nagarkar reported in 0065/2002 : AIR 2002 SC808 ,

III. Darshan Singh v. State of Punjab reported in 2007 (3) WBLR (SC) 237.

9. Relying on the case of C. Gangacharan v. C. Narayanan reported in : (2000)1SCC459 , the learned advocate for the decree-holder/opposite party submitted that unless the decree was void ab initio or without jurisdiction, the executing court cannot go behind the decree of a court of competent jurisdiction.

10. Regarding the narrow power of the executing court under Section 47 of the Code of Civil Procedure, 1908, the learned advocate for the decreeholder/opposite party relied on the case of Dhurandhar Prasad Singh v. Jai Prakash University and Ors. reported in : [2001]3SCR1129 and Nepal Food Corporation v. UPT Imports and Exports Ltd. reported in 2001 (1) CHN 716.

11. The learned advocate for the decree-holder/opposite party, thus, submitted that the order passed by the learned court below cannot be said to be suffering from any palpable infirmity or reasoning or error of law or was an order passed without jurisdiction, which could warrant interference of this Court, in exercise of its jurisdiction under Article 227 of the [Constitution of India](#). He also submitted that the learned executing court duly exercised jurisdiction vested under him and rightly refused to entertain the Section 47 application filed by the judgment-debtors, being the petitioners herein.

12. After considering the submissions made by the learned advocates appearing on behalf of the parties and upon perusing the instant application and the order impugned, I am of the view that the only point that falls for consideration in the instant case is whether in the light of the given facts, the learned executing court fell into any grave error of law or failed to exercise its jurisdiction while rejecting the judgment-debtors' application under Section 47 of the Code of Civil Procedure, 1908.

13. For the said purpose, the relevant portion of the impugned order is required to be set out::

On scrutiny of the record it is seen that all the above questions/disputes were decided by this Court in T.S. No. 2723/94 which was decreed by this Court against the defendant/J.Drs. and this Court was pleased to give declaration that Amitava i.e. the decree holder/O.P. is the absolute owner of the suit shop room and business named and styled as M/S. B.K.Dey by virtue of the deed of gift dt. 23.10.92. He only is entitled to run, operate, administer and manage the said business and is entitled to get all the profits of the said business. This Court further held in the judgement passed in T.S. No. 2723/94 that the defdt/J.Drs. have no right, title and interest in the disputed shop room and business and they do deliver khas possession of the disputed shop room and business to Amitava (decree holder). Against the said judgement an appeal was preferred before the Hon'ble Court. The said appeal was registered as F.A. No. 270/98 and after hearing both the parties Hon'ble Court was pleased to dismiss the said appeal as per judgement dated 6.10.05. I have carefully perused the xerox copy of the judgement dt. 6.10.05 passed by the Hon'ble Court in F.A. No. 270/98. Their Lordships held in the said judgement that in the subject controversy, the Tarapada branch (defdt/Jdrs) cannot be allowed to have the deed of gift invalidated on the ground that if given effect to, it would amount to creation of sub-tenancy or assignment without prior consent of the landlord. It is the landlord alone who can raise this issue. Their Lordships further held in the above judgement that mere intention to abrogate the tenancy expressed by the tenant alone, cannot abrogate the tenancy and its incidence outside the ambit of the statute guiding landlord tenant relationship. Till the death of Bijoy Krishna, the tenancy remained with him. The tenancy, with which a third party (being the landlord) is involved, cannot be deemed to have undergone a change by virtue of the execution of the deed of gift. Hon'ble Court further held in F.A. No. 270/98 that 'In these cases are not concerned with the effect of the deed of gift upon the tenancy of the shop room in the name of Bijoy Krishna. As observed hereinbefore that gift deed in its terms do not contemplate assignment of tenancy of the shop room. That question will be decided, if raised at all, in an appropriate time in presence of the landlord. Incidentally it may be observed that if the gift deed is construed as a gift comprising tenancy right in the shop room vis-a-vis the terms of tenancy agreement between Bijoy and his landlord then at best such part of the gift deed

may be declared invalid because of any statutory bar, if there be any. In such a case also the gift as a whole would not be valid. We are therefore of the view that the judgements and decrees of the trial court do not warrant any interference.

It is well settled that the executing court cannot go behind the decree.

That being the above position of law and having regard to the above finding given by the Hon'ble Court in the judgement dated 6.10.05 passed in F.A. No. 270/98 I am of the view that the instant application Under Section 47 of the C.P.C. filed by the petitioners has got no merit at all and as such the instant misc. case should be dismissed.

Hence, it is,

## **ORDER**

that the instant misc. case be and the same is dismissed on contest, but in the circumstances without any cost.

14. A bare reading of the above-quoted portion of the impugned order reveals that the learned court below considered at length, the judgment and order of the Division Bench of this Hon'ble Court dated 06th October, 2005 and held, inter alia, that it was well-settled that the executing court cannot go behind the decree.

15. At this stage, it may not be out of place to take note of the fact that during the course of the hearing of the instant application, it was brought to the notice of this Court that the judgment-debtors/petitioners have instituted a Title Suit, being Title Suit No. 2037 of 2008 before the learned City Civil Court at Calcutta against the landlady, being the defendant No. 1, and Bimal Kumar Dey, as the proforma defendant, for declaration and injunction and prayed, inter alia, as follows:

a) For a declaration that the plaintiffs and proforma defendant No. 2 are tenants in respect of the shop room situated on the ground floor of Premises No. 15, Mahatma Gandhi Road, Police Station Muchipara, Kolkata- 700 009 as stated in the schedule hereunder written.

b) Mandatory order directing the defendant No. 1 to mutate the name of the plaintiffs and proforma defendant No. 2 as tenants and issue rent receipts jointly in their names.

c) Permanent injunction restraining the defendant No. 1 from issuing any rent bills in favour of any third party except the plaintiffs and the proforma defendant No. 2.

d) Temporary Injunction restraining the defendant No. 1 from issuing any rent bills in favour of any third party except the plaintiffs and the proforma defendant No. 2...

16. The pleadings in the plaint of the aforementioned Title Suit No. 2037 of 2008 specifically adverts to and relies upon the proceedings of Title Suit No. 2723 of 1994 as well as the judgment and order dated 06th October, 2005 passed by the Division Bench of this Hon'ble Court dismissing the three appeals preferred by the petitioners herein. In paragraph No. 6 it has been stated by the plaintiffs that as per Section 14 of the [West Bengal Premises Tenancy Act, 1956](#), the gift of tenancy of a shop room was illegal and the same could not be transferred without the written consent of the landlord and no such written permission was taken by Bijoy Krishna Dey and as such, the tenancy of the said shop room devolved on the legal heirs of the deceased tenant, Bijoy Krishna Dey, as per provisions of the law of the land.

17. It is, thus, clear that the judgment-debtors/petitioners have instituted the aforementioned suit, after dismissal of the three appeals by the Division Bench of this Hon'ble Court on 06th October, 2005, to have their substantive right of being declared tenant under defendant No. 1, being the landlady, under the provisions of [West Bengal Premises Tenancy Act, 1956](#) adjudicated by a Civil Court. The judgment of the Hon'ble Supreme Court being in Gojer Brothers' case (supra) was delivered in the context of whether the decree of the trial court had merged into the decree of High Court and whether by reason of Section 17-D of the [West Bengal Premises Tenancy Act, 1956](#), the decree for eviction was incapable of execution.

18. The judgment rendered by the Hon'ble Supreme Court in Lakshmi Narayan Guin's case (supra) was rendered in the context of applicability of Sub-section (1) of Section 13 of the [West Bengal Premises Tenancy Act, 1956](#) which was

extended to Memary during the pendency of a first appeal. The Division Bench judgment of this Hon'ble Court in Syam Mandal's case (supra) was rendered in a fact situation where an appeal from a decree for ejectment was dismissed for default and the decree-holder applied to the trial court to execute its decree for ejectment which was by then more than one year old and the court without giving any notice to the petitioner issued the writ and gave symbolic possession to the landlords.

19. In my opinion, none of the above judgments relied on by the learned advocate for the petitioners are applicable in the facts of the instant case, since the Division Bench of this Hon'ble Court was pleased to go into all the issues sought to be raised herein, in the three appeals and had clearly held in the judgment and order dated 06th October, 2005, inter alia, that it was for the landlord alone to raise the issue as to whether the deed of gift would be invalidated on the ground that, if given effect to, it would amount to creation of sub-tenancy or assignment without prior consent of the landlord.

20. The doctrine of merger, as applicable in case of a decree passed by the trial court with that of the appellate court's, cannot be questioned. However, in the facts of the instant case, the judgments relied on by the learned advocate for the petitioners are not at all applicable in the facts of the instant case since the decree-holder, after dismissal of the three appeals by the Division Bench of this Hon'ble Court on 06th October, 2005, filed an application before the learned executing court incorporating the judgment and order of the Division Bench of this Hon'ble Court and prayed for resumption of the execution proceedings of the decree dated 29th January, 1998, from the stage it was stopped. The Division Bench of this Hon'ble Court, having affirmed the judgment and decree of the learned trial court by dismissing the appeals preferred by the judgment-debtors, effectively allowed resumption of the execution proceedings which had remained stayed during the pendency of the three appeals before the Division Bench of this Hon'ble Court. The judgment and order of the Division Bench dated 06th October, 2005 was brought to the notice of the learned executing court by the decree-holder. In my opinion, It cannot be open to the petitioners to now contend that the execution application cannot be proceeded, as the same has become non-existent

on the passing of the appellate decree by the Division Bench of this Hon'ble Court. As a matter of fact, the consequential effect of the judgment and order of the Division Bench of this Hon'ble Court dated 06th October, 2005 was the confirmation and affirmation of the decrees of the learned trial court, without any modification, variation or clarification of any sort whatsoever and the appellate decree passed on the same day was, therefore, merely a recording of the dismissal of the three appeals simpliciter. In any event, formal drawing up of a decree is merely an incidental function and in the instant case the appellate decree, as drawn up simply records dismissal of appeal and nothing else. The Division Bench, in the judgment and order dated 06th October, 2005, made it clear that the judgments and decrees of the trial court did not warrant any interference and therefore, in my opinion, the execution proceedings which had earlier remained stayed before the learned trial court, stood revived automatically, upon the pronouncement of the judgment by the Division Bench of this Hon'ble Court on 06th October, 2005 and passing of the consequential appellate decree on the same day, recording dismissal of the appeal. In Bhavan Vaja's case (supra), relied on by the learned advocate for the petitioners, the Hon'ble Supreme Court, inter alia, held that although it was true that an executing court could not go behind the decree under execution, but that did not mean that it had no duty to find out the true effect of that decree. The Hon'ble Supreme Court in the said judgment observed that for construing a decree it could, and in appropriate cases it ought to, take into consideration the pleadings as well as the proceedings leading up to the decree. The Hon'ble Supreme Court further held that in order to find out the meaning of the words employed in a decree, the court often had to ascertain the circumstances under which those words came to be used. In my opinion, such proposition of law is undoubtable, but wholly inapplicable in the facts of the instant case, since there is no doubt with regard to the circumstances under which the words employed in the decree, which was sought to be executed by the decree-holder, came to be used and the plain duty of the executing court has been duly discharged by taking note of the dismissal of the appeals and the observations made by the Division Bench of this Hon'ble Court in the judgment and order dated 06th October, 2005, leading up to the appellate decree passed on the same day, recording dismissal of appeal.

21. In the judgment of the Hon'ble Supreme Court in Amar Kumar Sen's case (supra), which has also been relied on by the learned advocate for the petitioners, the only point which came up for consideration was whether the original tenant had transferred the tenancy rights in favour of his son, being the respondent No. 4, and the Hon'ble Supreme Court, after taking into consideration the scope of Section 14 of the [West Bengal Premises Tenancy Act, 1956](#) held, inter alia, that the said provision made it clear that the tenancy right could be transferred only with the previous consent given in writing by the landlord. The Hon'ble Supreme Court in the said judgment held that since it was not shown to the Hon'ble Court that the appellant-landlord, at any point of time, had given his consent in writing to original tenant to transfer his tenancy right, the plea that the original tenant had transferred his tenancy right in favour of his son, i.e., respondent No. 4, could not be accepted. It is noteworthy to observe that the Hon'ble Supreme Court in Amar Kumar Sen's case was considering an appeal by way of special leave preferred by the landlord and not by a third party. In the instant case, the issue sought to be raised by the petitioners before the learned court below in the application under Section 47 of the Code of Civil Procedure, 1908 could not have been made without the presence of the landlord, as was observed clearly and in no uncertain terms by the Division Bench of this Hon'ble Court, in the judgment and order dated 06th October, 2005. Therefore, in my view, the judgment of the Hon'ble Supreme Court in the Amar Kumar Sen's case is wholly inapplicable in the facts and circumstances of the instant case.

Section 47 of the Code of Civil Procedure reads as follows::

Questions to be determined by the Court executing decree. - (1) all questions arising between the parties to the suit in which the decree was passed, or their, representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

24. The provisions under Order XXI read with Section 47 of the Code of Civil Procedure, 1908, provides the scheme and mechanism whereby the executing court executes decrees and orders. The questions to be determined by the court executing a decree, in my opinion, cannot traverse beyond the plain language and construction of the decree. The above provisions of law have been brought in by the legislature to facilitate execution of valid decrees and not for the purpose of creating hindrances and obstacles along the way. As observed hereinbefore, in the facts of the instant case, the decree passed by the learned trial court was affirmed by the judgment and order of the Division Bench of this Hon'ble Court on 06th October, 2005, which upheld its validity. Consequently, the appellate decree passed on the very same day, merely recorded dismissal of the appeal by the Division Bench of this Hon'ble Court. In the judgment and order dated 06th October, 2005, the Division Bench of this Hon'ble Court, inter alia, went into all the questions sought to be raised by the judgment-debtors before the learned executing court in the application under Section 47 of the Code of Civil Procedure, 1908. The impugned order, which takes due note of the observations made by the Division Bench of this Hon'ble Court in the judgment and order dated 06th October, 2005, cannot be said to be suffering from even an iota of infirmity of reasoning or any error of law or can be said to be an order passed without jurisdiction which could warrant interference of this Court in exercise of its jurisdiction under Article 227 of the [Constitution of India](#).

25. The application is, therefore, liable to be dismissed and the same is hereby dismissed.