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**(1997) 03 CAL CK 0002**  
**In the Calcutta High Court**  
**Case No : Co. No. 2529 of 1993**

Md. Shahabuddin

APPELLANT

Vs

Nayeem Md. Latif

RESPONDENT

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**Date of Decision :** 10-03-1997

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 115, 47  
Waqf Act, 1995 — Section 70, 70(1)

**Citation :** (1997) 03 CAL CK 0002

**Hon'ble Judges :** Debi Prosad Sarkar, J

**Bench :** Single Bench

**Advocate :** S.P. Roy Chaudhury, Sahidullah Munshi and Nilofer Siddique Alam, for the Appellant; Bidyut Banerjee and Shila Sarkar, for the Respondent

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## Judgement

Debi Prosad Sarkar (II), J.—This is an application u/s 115 of the C.P.C. directed against the Order No. 53 dated 16.8.93 passed by the learned Additional Munsiff, Sealdah in Misc. Case No. 9 of 1993 u/s 47 of the Code of Civil Procedure. The matter relates to a decree passed in a suit for eviction of a premises tenant filed by a mutwalli of a Wakf estate on the ground of default. It was a contested matter and the mutwalli obtained a decree for eviction against the present petitioner, when the said decree, had been put to execution, the present petitioner filed an objection u/s 47. C.P.C. as I have mentioned above, on the ground that the decree was a nullity and not executable in view of the provision of Section 70 of the Wakf Act. The learned executing Court did not accept that contention of the present petitioner and rejected his plea. On being aggrieved by such order of rejection the present application has been filed by the petitioner/judgment-debtor.

2. The main contention of the learned Advocate appearing for the petitioner is that for non-compliance with the provision of Section 70(1) of the Wakf Act the decree passed in the suit has become non-executable. Sub-section (1) of the Section 70 contemplates issuance of notice to Wakf Commissioner in respect of

any suit relating to the Wakf property or the office of the mutwalli, except a suit for recovery of rent. My attention is drawn by the learned Advocate for the petitioner to the provision of Subsection (4) of Section 70 of the said Act. Subsection (4) contains the effect of non-compliance with the provision of Subsection (1) of Section 70. On reading the provision of Sub-section (4). I find, that where no notice was served as required by sub-section (1) even if any decree is passed that may be avoided by the Wakf Commissioner if he challenges such order or decree before the Court within a month from the date of his knowledge of the order or such decree. In short, such a decree, if passed without compliance with the provision of Sub-section (1) of Section 70 is voidable at the option of the Wakf Commissioner. In this connection the learned Advocate for the petitioner has referred to several decisions. The earliest decision is reported in (1) The Commissioner of Wakfs Vs. Sm. Ayesa Bibi and Others, It is held in this decision that non compliance of the provision of Section 70(1) of the Wakf Act renders the decree void. Of course it was a suit for declaration that the Wakf deed or the deed by which Wakf Estate was created was void. The second decision referred to is a decision of the Division bench of this High Court, reported in 46 CWN 339. Similar principle has been laid down by this decision too: but I find, that suit was also for declaration that the particular property in suit was a Wakf property. Therefore, both these two decisions relates to the very existence of the Wakf Estate and does not relate to any incidental matter, such as the management of the estate and from that point of view, I feel constrained to hold with due deference, that the principles enunciated by these two decisions should not be attracted to the facts of the present case. In the present case I find, the dispute is between the tenant and the landlord. The petitioner herein was inducted by the mutwalli who is entrusted to manage the property of the estate and the relationship was one of contractual nature. In no way it affects the very existence of the Wakf Estate or the office of the mutwalli. Therefore, although is not expressed by the legislature in such language, that a suit of such nature i.e. as suit of eviction of a premises tenant filled by the mutwalli as the landlord would also require a notice to be served to the Commissioner of Wakf. I hold that no notice is essential in a suit of such nature. That apart, after careful consideration of the language used in sub-section (1) side by side with the language used in Sub-section (4) of Section 70. I cannot say that the provision of Sub-section (1) regarding service of notice is a mandatory one. Because, if it was mandatory in that case the decree/order would be void abinitio, no remedy would be provided by Sub-section (4) for non-compliance with the provision of Sub-section (1) of Section 70. But I find, that Sub-section (4) contains an alternative remedy where there is failure in compliance with the provision of Sub-section (1). That remedy is provided to the Wakf commissioner to approach a Court within a month from the date of knowledge for avoiding the decree or in other words for declaration that the decree passed without compliance with the provision of Sub-section (1) is void. Therefore, if the provision of sub-section (1) be treated as mandatory, then the provision of Sub-section (4) becomes superfluous and redundant: the golden rule of interpretation is that no particular

enactment should be construed in such a way as to render its other provisions nugatory or superfluous. Rather it is emphasised always, that a harmonious construction should be made regarding the enactments contained in a particular Act.

3. That apart, it is mentioned by the learned Advocate for the petitioner that the opposite party in their affidavit-in-opposition took the plea that they approached the Court for issuance of notice u/s 70, but as there was no direction from the Court, so notice u/s 70 could not be served on the Commissioner. Whatever it may be the language of Section 70 of the Wakf Act makes it clear that the duty is cast on the Court to issue the notice, of course, at the cost of the party concerned. If the court fails to exercise its statutory duty. I think, the party should not be penalised for such laches on the part of the Court.

4. Again it is submitted by the learned Advocate for the petitioner that in connection with another matter he sent a petition to the Wakf Commissioner alleging mis-management of the Wakf Estate and mentioning therein also about the suit which was filed against him by the mutwalli. But in spite of that, it is clear from the record, that the Wakf Commissioner did not exercise his option as provided by Sub-section (4) of Section 70 of the Act. Sub-section (1) of Section 70 contemplates service of notice to the Wakf. Commissioner and Sub-section (4) of Section 70 contemplates the remedy to be followed for non-compliance of the provision of sub-section (1). But Sub-section (4) does not contain any separate provision for service of notice to the Wakf Commissioner. Rather the said Sub-section has prescribed for the Wakf Commissioner a wide and clear course to follow for avoiding the decree or order within a month from the date of knowledge. If the knowledge comes two or three or five years after, the Commissioner has got the right to exercise his option, but within one month from the date of such knowledge. Considering all these aspects. I think, that there is no reasonable or justifiable ground to interfere with the impugned order passed by the Executing Court. Accordingly, the revisional application u/s 115 of the C.P.C. is thus disposed of and the impugned order is hereby affirmed.

On prayer of the parties xerox certified copies may be issued on priority basis, if applied for Interim orders, if any, are all hereby vacated.