

**SANJIT DEY VS. NAMITA SAMANTA & ORS.**

**Mr. Debdutta Basu**  
    **..for the petitioner**  
**Mr. Uttiya Ray**  
    **..for the opposite parties**

This revisional application arises out of an order dated October 12, 2020 filed in connection with Misc. Case No. 14 of 2018 arising out of Title Execution Case No. 1 of 1993, pending before the learned Civil Judge, Senior Division, Kalna, District Purba Bardhaman.

The petitioner as the co-sharer in respect of the property in question has challenged the said order on two fold grounds.

First, that the application for police help filed in the execution proceeding was barred by limitation as it was filed beyond the period of 30 days from the date of resistance, contrary to the provisions of Article 129 of the Limitation Act, 1963. The next contention was that the learned Court below while allowing the prayer for police help condoned the delay on the ground that the earlier application for police help which was not pressed had been filed on time and as such there was no delay. Article 129 of the Limitation Act, 1963 has been placed before

this Court along with the provision of Order 21 Rule 97 of the Code of Civil Procedure. It has been contended that the application for police help was effectively an application under Order 21 Rule 97 of the Code of Civil Procedure and as such any application by the decree holder, complaining of resistance or obstruction and for assistance of the court, should be construed as an application under the said provision. Thus, when an application filed by the opposite parties was an application for execution of the decree with police help in view of the resistance faced by the bailiff who went to execute the writ of delivery of possession, the said application ought to have been filed within 30 days from the date of resistance. It is further argued that the learned Court below could not have taken into consideration the application filed by the opposite parties on the first occasion which was dismissed as not pressed, while computing the period of limitation and thereby condone the delay upon consideration of the date of filing of the first application as the date from which the period of limitation of 30 days under Article 129 of the Limitation Act, 1963 would start running.

The learned Advocate for the opposite parties submits that an application for police help in execution of a decree for delivery of possession was an application filed in aid of execution and it was not an application

under Order 21 Rule 97 of the Code of Civil Procedure.

He relied on a decision in the matter of **Panka Lal Bag Vs. Santosh Kumar Sikdar, reported in AIR 1984 Cal 232**, where it was held as follows:-

*“4. I am not inclined to accept the contention of Mr. Mitra. The limitation for possession after removing the resistance or obstruction to delivery of possession to immovable property decreed is 30 days after the date of resistance or obstruction but the application for police help cannot come within this category. It is not by itself an application for possession nor is it an application under Order 21, Rule 97 of the Civil P.C. In an application for police help the applicant's prayer is to give him the aid of the police for executing the decree for possession which is the ultimate object. The application for police help is different from the main application. It is a subsidiary application to the main application for execution. In this connection I may refer to a judgment reported in AIR 1957 Cal 252, (Gaya Nath v. Amulya Chandra). The said judgment supports the view that an application for police help is essentially different from an application under Order 21, Rule 97.*

*5. It is common knowledge that police help is sought for in the matter of execution when there is apprehension of breach of peace. It is resorted to for the sake of security for all connected with the execution. The apprehension of the breach of peace generally is one of the main grounds for such an application for police help. Court has to scrutinise the facts and circumstances to ascertain whether such a prayer would be allowed before it is granted. The application for police help is not an application for execution within the meaning under Order 21, Rule 97 of the Civil P.C. The person seeking to execute will make an application to the Court if obstructed complaining of any resistance or obstruction as provided under Order 21, Rule 97 of the Civil P.C. and if such a complaint is made other provisions of Order 21, Rule 97 will follow. But police help is entirely different. If the decree cannot be executed without police help because of the conduct of the persons occupying the premises—may they be judgment-debtors or any other person or persons and such conduct tends to create an atmosphere of breach of peace the decree-holder may apply to the Court for grant of such help stating the reasons. The very nature of the application for police help is essentially different from an application under Order 21, Rule 97. It may be noted that the Court has framed diverse rules for dealing with such an application for police help. In this connection Rule 208 of the Civil Rules and Orders (guidelines for the subordinate courts) and also Rules 14(a) to 14(g) of Chapter 17 of the Original Side Rules (guidelines for the original side of this Court) may be referred to.*

*6. Bachwat J. in the Calcutta case referred to above has held that procedure under Order 21, Rule 97 is the original proceeding in execution. He observed that the lis is commenced by a petition or complaint. The cause of complaint is resistance or obstruction of the warrant of possession by the bailiff and when such obstruction is made or decree-holder faces a resistance he may apply under O. 21, R. 97 of the Civil P.C. and he has to do so within 30 days of the obstruction complained of. The application for police help is not coming within the category of Order 21, Rule 97 of Civil P.C. If in spite of the application made under Order 21, Rule 97 the decree-holder does not get possession if he is still resisted by the party and because of the existing circumstances and prevailing atmosphere and/or the situation in the locality such help is necessary then only police help can be granted and as I have already mentioned for such help rules have been framed both in the subordinate Courts and in the original side of the High Courts laying down guidelines for such help.*

*7. On proper construction of these rules it is clear that the police help is an extraordinary mode or procedure to implement execution of the decree. This special procedure of police help would only be allowed when grounds as enumerated in Rule 208 of the Civil Rules and Orders or in the relevant original side rules exist. Under provisions of Article 129 of the Limitation Act, for possession of immovable property application would have to be made within 30 days of resistance. Such application cannot be equated with the application for police help in view of the fact that for police help there need not be any actual resistance and such a help can be prayed for and such a procedure can be availed of at any time even when breach of peace is apprehended or anticipated police help is an aid to execution, not the execution by itself and the provisions of Article 129 of the Limitation Act have no application for resorting to such a special legal procedure.”*

The said view was inspired by the decision of the Calcutta High Court in the matter of **Gaya Nath Vs. Amulya Chandra, reported in AIR 1957 Cal 252.** Reliance was also placed in the matter of **Bidhan Basaj Vs, Manas Guha & Ors(S.M.A. 317 of 2006 with C.A.N. 7983 of 2018).** Thus, in view of the above settled proposition of law, limitation of 30 days prescribed under Article 129 of the Limitation Act, 1963 is not applicable

in this case and the order impugned does not suffer from any material irregularity.

However, with regard to the other contentions of Mr. Basu that the second application for police help was not maintainable in view of the non-prosecution of the earlier application, is not impressive. The first application was withdrawn after the second application had been filed on the same day, that is, July 20, 2018. Thus, the argument that without leave to file a fresh application the second application was not maintainable is also not accepted. The second application was filed with better particulars on the same day, that is, on July 20, 2018, when the earlier application was not pressed.

Under such circumstances, this revisional application is dismissed.

There will be however no order as to costs.

Urgent photostat certified copy of this order be given to the parties on priority basis, if the same is applied for.

*(Shampa Sarkar,J.)*