

17.11.2021
(S/L-28)
Ct.-18
(Susanta)

(Via Video Conference)

C.O. 740 of 2020

Sri Pradip Majhi
-Vs-
Sri Shankar Majhi & Ors.

Mr. Debjit Mukherjee,
Ms. Susmita Chatterjee,
Ms. D. Ganguly,
Mr. K. Bhattacharya,
.... For the Petitioner.

Mr. Sanjib Seth,
... For the Opposite Parties.

Affidavit-of-service filed in Court today be
kept with the record.

The decree-holder of a decree of mandatory
injunction is the petitioner of the present
application under Article 227 of the Constitution
of India.

The petitioner in the execution case being
Title Execution Case no. 23 of 1995 levied to
execute the said decree pending before the 5th
Court of Learned Civil Judge (Junior Division),
Howrah applied for grant of police assistance to
execute the said decree by filing an application
under Rule 208 of Civil Rules and Orders.

The learned Trial Judge by a part of the
order dated January 24, 2020 has dismissed the
said application holding that neither the bailiff
nor the decree-holder has been examined in
support of the said application.

Since no date was fixed for recording of evidence of the bailiff or the decree-holder in the said execution case, dismissal of the said application on the said ground is not proper.

The portion of the order dated January 24, 2020 whereby the said application under Rule 208 of Civil Rules and Orders has been dismissed, is set aside.

The Executing Court is requested to decide the said application afresh in accordance with law after affording opportunity to the petitioner to adduce evidence in support of his said application and in doing so, shall not grant any unnecessary adjournment to either of the parties.

C.O. 740 of 2020 is disposed of with the above terms without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)