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C.O. 1442 of 2022

**Sunil Shaw
Vs
Zubaida Hamid**

Mr. Tapas Kumar Mondal,
Mr. Mritunjay Saha.

... For the petitioner.

Mr. Wasim Ahmed,
Ms. Kaynat Parveen.

... For the respondent No.1.

The subject matter of challenge in this revisional application is against the rejection of a petition praying for addition of parties under Order 1 Rule 10 of the Code of Civil Procedure, filed in Misc. Case No. 208 of 2017, arising out of Ejectment Suit No. 10 of 2016 of learned Civil Judge (Junior Division), 2nd Court, Alipore, South 24 Parganas.

Admittedly pending Misc. Case No. 208 of 2017 under Order 21 Rule 97 of the Code of Civil Procedure, is for the police help, for resistance being raised by the men and agents of judgment-debtors against the execution of the decree, wherein petitioner sought to be added under Order 1 Rule 10 of the Code of Civil Procedure. Further admitted position is that petitioner is not made party to a decree, granted against the opposite party/decreed-holder. That for adjudication of independent right, petitioner has filed a separate Misc. Case being No. 81 of 2019 under Order 21 Rules 98, 99,

100 and 101 of the Code of Civil Procedure, read with Section 47 of the Code of Civil Procedure before the Court below.

An *ex parte* order of injunction has been granted in Misc. Case No. 81 of 2019. A prayer for police assistance, as sought for by the petitioner for the implementation of ad interim order of injunction, has been granted by the Court below, in Misc. Case No. 81 of 2019.

Upon referring such facts, learned advocate for the petitioner submits that decree has been obtained fraudulently by opposite party/decreed-holder, making some material suppression of facts, and even without impleading the petitioner, as one of the parties to this suit ended in decree.

Learned advocate for the petitioner further contends that in spite of making observation, made by the Court below to the effect that *“it would be proper to pass police help after hearing of the Misc cases pending before this Court in connection with the Execution case”*, the Court below being oblivious of such pendency of Misc. Case No. 81 of 2019, together with ad interim order of injunction granted in favour of the petitioner, has erroneously rejected the prayer for addition of the party.

It is also contended by the learned advocate for the petitioner that pending adjudication of independent

right, title and interest of the petitioner in Misc. Case No. 81 of 2019, the Court below ought to have allowed the proposed addition of party under Order 1 Rule 10(2) of the Code of Civil Procedure.

Per contra, learned advocate appearing for the caveator/opposite party submits that an application is still pending, filed by the petitioner in Misc. Case No. 81 of 2019 praying for stay of execution of the decree, passed by the Trial Court.

Disputing with the submission, raised by the petitioner, learned advocate for the opposite party submits that the Misc. Case, registered under Order 21 Rule 97 of the Code of Civil Procedure, read with Section 208 of Civil Rules and Orders, vide Misc. Case No. 208 of 2017 is an independent one, seeking police help for the execution of the decree against the resistance, being raised by the men and agents of the judgment-debtors.

It is thus strenuously contended by the learned advocate appearing for the opposite party, that there is no scope available in pending Misc. Case No. 208 of 2017 for addition of party upon resorting to Order 1 Rule 10 of the Code of Civil Procedure. The application praying for stay of execution of a decree, having remained pending still now, learned advocate for the opposite party submits that impugned order does not call for any interference.

Having considered the submission of both sides, it

appears that Misc. Case No. 208 of 2017 is relatable to a prayer for police help in a case of resistance, or obstruction being raised by men and agents of judgment-debtors against the executability of the decree, already granted by the Trial Court.

When admittedly there is a separate Misc. Case registered under Order 21 Rules 98, 99, 100, 101 of the Code of Civil Procedure, vide Misc. Case No. 81 of 2019, and in connection with which, there is an application pending for stay of execution of the decree, weherein the apprehension disclosed by the petitioner, that in the event of execution of decree with police help, may be best decided.

The Court below as such is directed to dispose of the pending application, filed by the petitioner, praying for stay of execution of the decree, granted against opposite party/decreed-holder, expeditiously, either on the date so scheduled by the Court below, or if for any reasons whatsoever, the same could not be done, the application may be disposed of peremptorily within three (03) weeks thereafter, providing sufficient opportunity of hearing to either of the parties to this case.

This would not, however, prevent the opposite party/decreed-holder to pray for occupational charges, if there be any, in accordance with provisions of law.

The prayer for stay filed by the petitioner in Misc.

Case No. 81 of 2019 needs to be disposed of independently, irrespective of previous rejection of a prayer for addition of party, filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure.

Petitioner is directed to make communication of this order to the learned court below.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)