

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI**

07.06.2022

Item no. **13**

Dd

CO 100 of 2021

**Smt Sita Pradhan
Vs.
Sri Ratan Kumar Pradhan**

*Mr. Soumyajyoti Dutta, Advocate
... ... For the Petitioner*

The revisional application is directed against the Order no. 92 dated March 3, 2021 passed by the learned Executing Court in Misc. Case no. 26 of 2018 filed in Title Execution Case no. 17 of 2013.

None appears for the Opposite Party despite service. Affidavit-of-service filed in Court be taken on record.

Learned advocate appearing for the petitioner submits that the petitioner is the owner of the immovable property in respect of which, the plaintiff/decreed holder sought to put a decree in execution. The petitioner as the owner filed an application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 by way of Misc Case no. 26 of 2018.

He submits that, the learned Judge acted with material irregularity in rejecting such application on the ground that the petitioner is not a party to the lis. The learned Judge acted with material irregularity in holding that the

petitioner did not have requisite locus standi to file such application.

Learned advocate appearing for the petitioner relies upon **(1998) 4 SCC 543[Shreenath & Anr. vs. Rajesh & Ors.]** and submits that subsequent to the amendment of the Code of Civil Procedure Code, 1908, the provisions of Order 21 Rules 97 to 101 of the Code of Civil Procedure, 1908 encompasses a situation where the right of even a stranger resisting a decree in respect of an immovable property can be decided in the proceeding for execution of a decree in respect of the immovable property. The learned Judge acted with material irregularity in returning a contrary finding.

In the facts of the present case, the plaintiff/Opposite Party put a decree into execution relating to an immovable property by way of Title Execution Case no. 17 of 2013. The petitioner before this Hon'ble Court claims to be the owner of such immovable property and claims that the decree of the plaintiff/opposite party cannot be put into execution in view of the right, title or interest of the petitioner therein. Consequently, the petitioner filed a Misc. case being Misc. Case no. 26 of 2018 under Order 21 Rule 97 of the Code of Civil Procedure, 1908 in Title Execution Case no. 17 of 2013. Title Execution Case no. 17 of 2013 is the execution proceedings of the decree which the plaintiff/decreed holder put into execution in respect of the immovable property concerned. By the impugned order dated March 3, 2021, the

learned Judge was pleased to hold that the petitioner did not have locus to make the application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 since the petitioner is a party to the litigation.

Order 21 Rule 97 of the Code of Civil Procedure, 1908 contemplates a situation where the execution of a decree in respect of an immovable property is resisted or obstructed by "any person". Order 21 Rule 97 is not limited to the parties to the litigation. It encompasses persons other than the parties to the litigation seeking to resist the execution of the decree.

Petitioner claims ownership in respect of the immovable property which is sought to be put into put into execution in Title Execution Case No. 17 of 2013.

In **Shreenath (supra)**, the Supreme Court held that all applications relating to right, title or interest in respect of the immovable properties invoked in the execution should be determined by the Court deciding the execution proceeding and not by a separate suit. It notes the amendments to the Code of Civil Procedure, 1908 and is of the view that the amendments go further. It notes that a fresh suit is not required in respect of all matters pertaining to the immovable property including obstruction by a stranger and that such issues should be determined in the executing proceeding itself. It explains that the expression "any person" in Rule 97(1) is used deliberately for widening the scope of power so that the executing court could adjudicate the claim made in any such

application under Order 21 Rule 97. It expresses the use of the words "any person" includes all persons resisting the delivery of possession, claiming right in the property, even those not bound by the decree, including tenants or other persons claiming right on their own, including a stranger.

Applying such ratio of **Shreenath** (supra) to the facts of the present case it cannot be said that the application under Order 21 Rule 97 of the Code of Civil Procedure, 1908 made by the petitioner by way of Misc Case no. 26 of 2018 is not maintainable simply on the ground that the petitioner is a stranger to the litigation and is not a party to the decree. The petitioner is claiming right, title and interest in respect of the immovable property over which Title Execution Case No. 17 of 2013 is pending.

In such circumstances, the impugned order no. 92 dated March 3, 2021 is set aside. The learned Executing Court is requested to decide Misc. Case no. 26 of 2018 afresh on merits without being influenced by any of the observations made in this order.

CO 100 of 2021 is **disposed of** accordingly.

(Debangsu Basak, J.)