

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.22194 of 2022
(Through hybrid mode)**

M/s. Mesco Hotels Ltd.

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Petitioner

Mr. S.S. Das, Senior Advocate

-versus-

Bijoy Kumar Mohapatra and others

Opposite Parties

Mr. A.K. Sharma, AGA

CORAM: JUSTICE ARINDAM SINHA

**ORDER
30.08.2022**

**Order
No.**

01.

1. Mr. Das, learned senior advocate appears on behalf of petitioner and submits, somehow, his client's property has become subject matter of execution proceeding under Execution Case no. 42 of 2016 pending in Court of the District Judge, Jajpur. His client has no connection with either party in the suit, who are now decree holder and judgment debtor in the proceeding. He submits, on his client learning of the execution proceeding to affect the property, it had applied to be added as party therein. The application was dismissed, against which his client sought judicial review. By order dated 13th July, 2022 in his client's earlier writ petition W.P.(C) no.17192 of 2022, his client obtained direction to forthwith move subsequent application already made under order XXI rule 99 in

Code of Civil Procedure, in the execution proceeding. His client did so but by impugned order dated 6th August, 2022 the application was dismissed on finding that rule 99 was not applicable to his client as it had not been dispossessed. His client is again before this Court since, subsequent thereto, by order dated 10th August, 2022 police assistance was directed for getting the property vacated.

2. On query from Court Mr. Das submits, opposite party no.1 is decree holder and opposite party no.2, judgment debtor. Mr. Sharma, learned advocate, Additional Government Advocate appears on behalf of opposite party no.3 (Commissioner of Police).

3. Interpretation in impugned order that petitioner has not yet been dispossessed and cannot apply, cannot be faulted. On the other hand, petitioner claims that the property belongs to it and not to judgment debtor. There is no doubt that the property has become subject matter of the execution proceeding. In the circumstances, Court appreciates that there is resistance to execution of the decree, from petitioner.

4. Petitioner has liberty to produce this order before the Executing Court, for cognizance by said Court that there is resistance to execution, from petitioner, claiming to be one other than judgment debtor. In the circumstances, on notice of this order to the Court below, decree holder may take appropriate steps to complain of such

resistance and thereby deal with the situation arisen, for execution, in accordance with law.

5. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks

