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CO 83 of 2023
Sri Mihir Ranjan Sarkar
Versus
Sri Mrinal Kanti Nandi

Mr. Arif Ali,
Mr. S. Bhattacharjee ... For the petitioner.

This revisional application has been filed challenging the order dated 14th November, 2022 whereby learned Civil Judge (Junior Division), 2nd Court Alipore refused the prayer of the application under Rule 208 of Civil Rules and recorded order assigning reason that the application under Rule 208 of Civil Rules and Orders contains the ingredients of provisions of Order 21 Rule 97 of the Code of Civil Procedure and for that reason, petitioner/decreed-holder ought to have filed an application under Order 21 Rule 97 of the Code of Civil Procedure as Miscellaneous case giving space to the Jdr. to participate in the hearing of that application.

Assigning the aforesaid reason learned Executing Court recorded that the application under Rule 208 of Civil Rules and Orders is not maintainable.

Learned advocate appearing on behalf of the petitioner/decreed-holder thus relied on a decision in the case of **Anjali Das & Ors. vs. Sri Samar Roy & Ors.** reported in **2010 SCC OnLine Cal 1265** wherein this Hon'ble Court opined that an application for grant of

police help is maintainable under Rule 208 of Civil Rules and Orders of the High Court, Calcutta and there should be no reason to convert the said application into an order under Order 21 Rule 97 of the Code of Civil Procedure. Before granting the police help under Rule 208 of Civil Rules and Orders, Court must satisfy that there is grave apprehension of breach of public peace and tranquility in execution of the writ of possession.

Here in the case in hand, learned Judge recorded that the application under Rule 208 of Civil Rules and Orders is not maintainable on the ground that the petition contains all ingredients of the provision of Order 21 Rule 97 of the Code of Civil Procedure. On that ground learned Judge refused the application under Rule 208 of Civil Rules and Orders without giving any opportunity to the decree-holder to satisfy the Court regarding apprehension of breach of public peace and tranquility at the time of execution of the writ of possession.

The order impugned dated 14th November, 2022 is not sustainable in law and accordingly stands set aside.

Learned Judge is requested to rehear the application under Rule 208 of Civil Rules and Orders giving opportunities to the decree-holder to satisfy the apprehension of breach of public peace and tranquility.

With the aforesaid observation the revisional application stands disposed.

Urgent certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Bibhas Ranjan De, J.)