

In the High Court at Calcutta
(Civil Revisional Jurisdiction)
Appellate side

S/L No. 18
17.04.2023
Ct-237
(RD)

C.O. 248 of 2023

**Dharamvir Kumar Singh
Vs.
Sarat Kumar Gupta & Ors.**

Mr. Gopal Ch. Ghosh, Adv.
.... For the petitioner

Mrs. Usha Maity, Adv.
Mrs. Amita Khari, Adv
Mr. Sakya Maity, Adv.
... For the opposite party.

In this revision application order dated 19.12.2022 was challenged on the ground the petitioner/Jdr was ready to hand over the possession of the decretal property i.e. 80 sq. ft. tin shade room in presence of one learned advocate commissioner for identification of the tin shade room measuring 80 sq.ft.

Learned Judge by the order impugned rejected the said application for appointment of learned advocate commissioner on the ground that Executing Court cannot go beyond the decree.

Learned advocate, Mr. Gopal Ch. Ghosh, appearing on behalf of the petitioner/Jdr has referred to the application for appointment of advocate commissioner whereby petitioner/Jdr inclined to hand over the decretal property i.e. one tin shade room of 80 sq.ft., on the 2nd floor roof at the premises no. 2/2B, Dr. Suresh

Sarkar Road, PS Entallty, Kolkata 700014 in presence of learned commissioner.

Mr. Ghosh has further submitted, by referring to the schedule of the plaint, that the decretal property is not identifiable in absence of any learned advocate commissioner.

Learned Advocate, Mrs. Usha Maity, appearing on behalf of the opposite party/decreed holder has submitted that a tin shade room of 80 sq. ft. on the 2nd floor roof at the premises 2/2B, Dr. Suresh Sarkar Road, PS Entallty, Kolkata 700014 cannot be said to be an unidentified property.

From the documents on record, it is admitted fact that opposite party/ decreed holder obtained a decree in respect of one tin shade room on the 2nd floor roof at the premises no. 2/2B, Dr. Suresh Sarkar Road, PS Entallty, Kolkata 700014, and that was put into execution in connection with Title Execution case no. 11 of 2020.

From the record, I find one bailiffs report showing obstruction at the time of execution of the decree. The bailiff was examined as PW2. In course of hearing of the application under Rule 208 of Civil Rules and Orders bailiff has stated in his cross-examination hereunder:-

- “1. I had with me the copy of decree when I went to the decretal property.
2. The decretal property is a tin shade room about 80 sq. ft. on the second floor roof.
3. Nothing is mentioned regarding the

boundary of the said room.

4. There was only one Tin shed room on the roof. There was nothing else on the roof. I was not allowed to enter into the room.

5. I did not carry any measurement tape with me.”

Conjoint reading of bailiff report as well as reply no. 4 to the cross-examination of bailiff it appears that there was only one tin shade on the 2nd floor roof and there was nothing else in the roof and he was not allowed to enter into the room.

Considering the aforesaid facts and circumstances particularly unchallenged testimony of the bailiff (PW2) I am unable to hold that tin shade room on the 2nd floor roof cannot be identified without the assistance of advocate commissioner.

In the premises set forth above, I am also unable to interfere with the order of the Executing Court rejecting the application for appointment of advocate commissioner.

Thus, the revision application being no. CO 248 of 2023 stands dismissed.

Let a copy of this order be communicated to the Learned Additional Court of Civil Judge (junior Division) Sealdah.

All parties are directed to act on a server copy of this order downloaded from the official website of this Court.

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

(Bibhas Ranjan De)