

Form No. J.(2)
Item No.2

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

HEARD ON:18.08.2023

DELIVERED ON:18.08.2023

CORAM:

**THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. 560 of 2023
With
I.A. No. CAN 1 of 2023**

**Md. Izhaar & Ors.
Vs.
The State of West Bengal & Ors.**

Appearance:-

**Mr. Asis Bhattacharya
Ms. Maloti Biswas**

.....for the appellants

**Mr. Tanmoy Mukherjee
Mr. Souvik Das
Mr. K. Raihan Ahmed
Mr. Rudranil Das**

.....for the respondent no.5

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. This appeal is at the instance of a judgement-debtor/resistor challenging an order dated March 20, 2023 passed by a learned Single Judge in W.P.A. 5402 of 2023.
2. By the order impugned, the authorities of the Shibpur Police Station was directed to deploy appropriate police force on the date and time mentioned in the said order. The bailiff of the Civil Court was also directed to deliver possession, as ordered by the Civil Court on the date and time mentioned in the said order.
3. The 5th respondent along with Tapeswar Chowdhury and Maheshwar Chowdhury filed a suit being Title Suit No.546 of 2019 before the learned Civil Judge (Senior Division), 3rd Court at Howrah. The said suit was decreed *ex parte* on September 29, 2021. The decree was put into execution giving rise to Title Execution Case No.16 of 2021. The executing court directed the bailiff to deliver possession in favour of the decree holders. However, the bailiff was resisted and upon an application filed by the decree holders under Rule 208 of the Civil Rules and Orders, the executing court directed the Nazir to execute the decree through Process Server with the help of police. Since the possession could not be delivered an application for breaking open the padlock was filed by the decree holders. The executing court allowed such application thereby authorising the bailiff to break open the padlock in any of the rooms with police help. The appellants claim to have filed a Miscellaneous Case under Order IX Rule 13 of the Code of Civil Procedure being Misc. Case No.86 of 2022 praying for setting aside the *ex parte* decree dated September 29, 2021

passed in Title Suit No.546 of 2019. The prayer for stay of execution at the instance of the appellants herein, however stood rejected by an order dated January 10, 2023.

4. The 5th respondent, pursuant to an order passed by the executing court, deposited the police cost for the purpose of obtaining possession by executing the decree. Alleging inaction on the part of the police, the 5th respondent filed an application under Article 226 of the Constitution of India. The writ petition was allowed by the order impugned.
5. Being aggrieved, the judgement-debtor/resistor in order to resist the execution of the eviction decree has approached this Court by filing this intra-Court mandamus appeal.
6. Mr. Bhattacharya, learned advocate representing the appellants drew the attention of the Court to the plaint of the eviction suit being Title Suit No.65 of 2023 filed by Mina Devi and others against the appellant no.1 herein praying for his eviction from the property mentioned in the schedule to the plaint and contends that the schedule of the property mentioned in Title Suit No.65 of 2023 is identical to the decreetal property involved in Title Suit No.546 of 2019. He submits that the Civil Court has passed an order of *status quo* in respect of possession in Title Suit No. 65 of 2023. He further submits that since the executing court is in seisin over the matter relating to execution of the decree and there is a dispute with regard to identification of the decreetal property, the learned Single Judge in exercise of its jurisdiction under Article 226 of the Constitution of India ought not to have passed the impugned order.

7. Mr. Mukherjee, learned advocate representing the decree holder/5th respondent submits that the decreetal property and the schedule of the property of Title Suit No.65 of 2023 is different. He further submits that the decree holders of Title Suit No.546 of 2019 are not parties in Title Suit No.65 of 2023. Accordingly to Mr. Mukherjee, pendency of the Title Suit No. 65 of 2023 has no bearing in the execution of the decree passed in Title Suit No.546 of 2019.
8. Heard the learned advocates for the parties and perused the materials placed.
9. The records reflect the following factual position:- The decree for eviction in Title Suit No. 546 of 2019 was passed as far back as on September 29, 2021. The said decree was put into execution giving rise to Title Execution Case No. 16 of 2021. The learned executing court on an application filed under Rule 208 of the Civil Rules and Orders passed an order on February 8, 2022 directing the Nazir to execute the decree through Process Server with the help of police. The executing court also passed a direction authorising the bailiff to break open the padlock in any of the rooms with the police help.
10. The contention of the learned advocate for the appellants that since the Title Suit No.65 of 2023 is pending, the writ Court ought not to have passed the impugned order cannot be accepted for the reasons stated hereinafter.

11. Firstly, as would be evident from plaint of the Title Suit No.65 of 2023, that the suit property is a 1st floor flat at Holding no.60, Kazi Saiful Alam Lane, Police Station – Shibpur, District – Howrah whereas the decreetal property in Title Suit No. 546 of 2019 is a self-contained residential flat being part of a property situated within Howrah Municipal Corporation Holding No.61, Kazi Saiful Alam Lane. It is, therefore, evident that the properties involved in Title Suit No.65 of 2023 is not same and identical with the decreetal property of the Title Suit No.546 of 2019. That apart, the decree holders of Title Suit No.546 of 2019 are not parties in Title Suit No.65 of 2023. Therefore, pendency of Title Suit No.65 of 2023 as well as any orders passed in connection thereto cannot have any impact on the execution of the decree passed in connection with Title Suit No.546 of 2019.
12. Now, the question arises as to whether the learned Single Judge could entertain a writ petition praying for a direction upon the police authorities to implement the order passed by the civil court.
13. Article 226 of the Constitution of India states that the High Court shall have the power to issue to any person or authority including any Government directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo-warranto and certiorari or anyone of them for the enforcement of any of the rights conferred by Part – III and for any other purpose. It follows therefrom that the first part of Article 226 (1) of the Constitution empowers the High Court to pass orders, directions or writs for protection of the fundamental rights. The second

part of Article 226(1) empowers the High Court to enforce the legal duty of any person or authority. The expression “for any other purpose” used in Article 226(1) of the Constitution of India has been interpreted by the Hon’ble Supreme Court in the case of ***The Calcutta Gas Company (Prop) Limited Vs. State of West Bengal & Ors.*** reported at ***AIR 1962 SC 1044*** to mean the enforcement of any legal right and the performance of any legal duty. The rights of the private parties qua immovable property, which are civil in nature have been decided by the Civil Court of competent jurisdiction by passing a decree for eviction against the appellant nos. 1 and 2. The executing court passed an order authorising the bailiff to break open the padlock and deliver possession of the decreetal property in favour of the decree holders. The 5th respondent/decreet holder have a legal right to take delivery of possession of the decreetal property in terms of the order passed by the executing court with police help. Though, Mr. Bhattacharya, learned advocate for the appellants would contend that a Civil Revision application at the instance of the appellants is pending before a learned Single Judge challenging the order of rejection of the prayer for stay of execution case, mere filing of such revisional application cannot be a ground for stalling the execution of the decree. It is not in dispute that the police authority is under a legal duty to obey and/or enforce and implement the orders passed by the Civil Court. The 5th respondent has a legal right to take delivery of possession in terms of the order of the Civil Court and the respondent police has a legal duty to implement the order of the Civil Court. Merely because of the fact that an execution case is pending, that cannot, however curtail the power of the High Court under

Article 226 of the Constitution of India to issue a writ or direction to the police authority within the State to enforce the order passed by the Civil Court, which is a very wide power.

14. Therefore, in our considered view, the learned Single Judge was right in entertaining the writ petition at the instance of the decree holders and issuing a direction upon the authorities of the Shibpur Police Station to deploy appropriate police force for the purpose of assisting the bailiff in executing the decree.
15. The decree holder/5th respondent herein has already deposited the police cost amounting to Rs.1,05,761/- as submitted by Mr. Mukherjee, learned advocate appearing for the respondent no.5.
16. In view thereof, the direction passed by the learned Single Judge regarding deployment of police force is not interfered with by this Court. However, since the time within which the order passed by the executing court for delivery of possession was to be executed with police help stood expired for the reasons as aforesaid, the time stipulated by the learned Single Judge for deployment of appropriate police force is extended till 4 p.m. of August 25, 2023.
17. The Commissioner of Police, Howrah Police Commissionerate is directed to issue appropriate instructions to the Officer-in-Charge, Shibpur Police Station being the 4th respondent in this appeal to deploy appropriate police force in terms of the directions passed by the learned Single Judge.

18. The appeal and the application stand disposed of with the modification as indicated hereinbefore. Since the Misc. Case being No.86 of 2022 praying for setting aside of the *ex parte* decree dated September 29, 2021 is still pending, this Court makes it clear that the applicants in the said misc. case will be at liberty to avail all the remedies available under the Code of Civil Procedure, in case the said misc. case is allowed by the civil court.
19. No costs.
20. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

I agree.

(T.S. SIVAGNANAM)
CHIEF JUSTICE