

JPD-04
Ct No.01
20.09.2023
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CO No. 88 of 2023

Sri Bimal Saha and others
Vs
Sri Dulal Chandra Singha

Mr. Kunaljit Bhattacharya,
Mr. Mrinmoy Laskar,
Mr. H. Ali,
Mr. Satyam Sarkar,
Mr. Alok Sah

....for the petitioners

Mr. Ajay Kumar Singhaniya,
Ms. M. Roy

....for the opposite parties

- 1.** The limited conspectus of this revisional application is whether the learned Trial Judge was justified in passing an order of police help in connection with an execution case. The said order, it was recorded, was passed under Section 151 of the Code of Civil Procedure. Learned counsel for the petitioners argues that the appropriate provision was Rule 208 of the Civil Rules and Orders framed by this court. As such, the application under Section 151 of the Code of Civil Procedure could not have been entertained or allowed by the Executing Court.
- 2.** That apart, it is argued that Rule 208 contemplates that police help will be directed if there is a chance

of disturbance of public peace. In the absence of any such circumstance having arisen, the impugned order is bad in law. It is further argued that the petitioners ought to have been given a notice of the application for police help and heard prior to any order being passed.

3. The facts of the case in a nutshell are that the opposite parties obtained an eviction decree against the petitioners *ex parte*. Subsequently, the petitioners filed an application under Order IX Rule 13 of the Code of Civil Procedure, accompanied by an application for condonation of delay in filing the same. Both having been rejected, a revision was taken out. Subsequently, upon discovery that appeal was the appropriate remedy, the revision was not proceeded with and an appeal has been preferred. The said appeal is still pending.
4. Learned counsel for the decree holders/opposite parties submits that it is well-settled that the executing court can pass an order under Section 151 of the Code of Civil Procedure for grant of police help to execute a decree. In any event, erroneous mentioning of caption cannot vitiate an order if the court otherwise is empowered to pass such order.
5. Learned counsel further submits that the conduct of the petitioners is deplorable, since the judgment

debtors/petitioners have been trying for long to procrastinate the execution of the decree.

6. Taking first things first, learned counsel for the opposite parties is justified in arguing that mere mention of an erroneous provision does not vitiate an order, if the court otherwise is empowered to pass such order. Even if it is assumed that Rule 208 is the appropriate provision, the Executing Court, having power under Rule 208, merely misquoted Section 151 of the Code of Civil Procedure, which does not vitiate the propriety of the order itself. That apart, even Rule 208 does not specifically provide for giving a prior notice to the judgment debtors.
7. In this context, the interplay between the provisions of Order XXI Rules 97 to 101 of the Code of Civil Procedure, Rule 208 of the Civil Rules and Orders and Section 151 of the Code of Civil Procedure are to be looked into.
8. Order XXI Rule 97 contemplates the passing of an order for implementing a decree against a judgment debtor. The provisions of Rule 101, read with the ancillary provisions in Order XXI, confer a right on a third party, who is neither the judgment debtor nor claiming through the judgment debtor, to resist the execution of a decree. If a third party resists the decree, it is incumbent upon the Executing Court to decide all issues at stake between the parties.

However, nothing in Order XXI confers a right on the judgment debtors otherwise to resist the execution of decree unless there is an ingredient under Section 47, which vitiates the executibility of the decree itself. In the present case, no such stand has been taken by the judgment debtor at any point of time.

9. The judgment debtors themselves are bound by the decree and cannot claim the benefits of Rule 101 of Order XXI of the Code of Civil Procedure. In the absence of any such circumstance, there is no reason why the Executing Court ought to have granted prior notice to the judgment debtors before granting police help to execute the decree.
10. That apart, the execution case is pending since long, that is, from the year 2016. The judgment debtors have adopted several dilatory tactics to prolong the execution. First, the decree was allowed to be passed *ex parte* and thereafter an application under Order IX Rule 13 of the Code of Civil Procedure was filed, accompanied by an application for condonation of delay in filing the same.
11. Upon those being dismissed, a wrong provision of challenge was resorted to.
12. After that, an appeal has ultimately been filed but the judgment debtors do not produce any order of

the appellate court granting stay of the execution case.

- 13.** In the present case, all ingredients of Rule 208, which are essential to the said provision, have in fact been complied with by the Executing Court. The learned Executing Court clearly observed that the said court perused the report of the Process Server and Nazir of the Civil Courts, Jalpaiguri.
- 14.** It was further observed that it appears from the report that the Process Server went to the suit land for executing the decree in favour of the decree holder but could not execute the decree on the spot due to resistance raised by the judgment debtor himself. It was also recorded that there is enough chance of breach of peace of the suit property for which reason, the decree holder has prayed for police protection to execute the decree.
- 15.** In view of such observations, the ingredients of Rule 208(1) of the Civil Rules and Orders have also substantially been complied with. Thus, the arguments raised by the judgment debtor/revisionist petitioners cannot be accepted as tenable in the eye of law.
- 16.** In such view of the matter, no illegality or jurisdictional error was committed by the Executing Court in passing the impugned order.

- 17.** Accordingly, CO No. 88 of 2023 is dismissed on contest without, however, any order as to costs.
- 18.** Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with all requisite formalities.

(Sabyasachi Bhattacharyya, J.)