

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

WPA 27342 of 2023
Avijit Mallick & anr.
Versus
The State of West Bengal & Ors.

For the petitioners : Mr. Srijib Chakraborty
Mr. Aditya Mondal

For the private respondents : Mr. Bhudeb Chatterjee
Mr. Pradeep Kumar

For the State : Mr. Wasim Ahmed
Mr. Sk. Md. Masud

Heard on : 07.02.2024

Judgment on : 07.02.2024

Jay Sengupta, J:

This is an application alleging police inaction in executing a decree of a Civil Court.

Affidavit-in-opposition filed by the respondent no.5 is taken on record.

Affidavit-in-reply filed by the petitioners is also taken on record.

Learned counsel appearing on behalf of the petitioners submits as follows. A Civil Court passed a decree in favour of the petitioners on 30.03.2017. An appeal preferred by the defendants was dismissed on 30.11.2021. Even a second appeal was dismissed for default. On 06.12.2022, the Civil Court was pleased to allow police help for execution of the decree after a contested hearing. The bailiff along with police force went to execute the decree. On the first occasion, they were prevented by a huge mob of at least 200 to 250 persons. The bailiff accordingly gave a report dated 09.01.2023. On the second effort of the bailiff was also resisted by not only the judgment-debtor, but also his learned advocates who gathered people to prevent execution. Only a small portion of the scheduled property was handed over. The rest was forcibly withheld. The decree thus could only be partially executed. Accordingly, the bailiff filed a report dated 10.08.2023. The Schedule, by the way, speaks of two rooms and one flat. What the judgment debtor is trying to hand cover as the scheduled property is a portion of the said flat contained within the said flat. More police force is required to have the decree fully executed.

Learned counsel appearing on behalf of the private respondents submits as follows. The allegations made in the writ petition are denied. The

petitioners are trying to wrongly portray the scheduled property and get a decree executed for more than what the decree was meant for. The private respondent has already filed an application before the learned Civil Court that the decree has been satisfied.

Learned counsel appearing on behalf of the State submits that in the event more police force is required, the petitioner may be asked to pay for the necessary expenses.

It appears that the petitioner was granted a decree by a Civil Court. Execution of the same was directed. Even police help was directed to be provided. Despite this, as per the bailiff's report, on two occasions, the bailiff failed to execute the decree due to resistance. In fact, on the second occasion, the decree could only be partly executed.

Appeals preferred by the respondents have been dismissed and there is no stay order passed by any Court of law to prevent such execution.

In view of the same, let the petitioners approach the Civil Court for necessary order for execution of the decree in full and as per schedule and for the issuance of a writ of possession. In the event the same is granted, the police authorities shall accompany the bailiff to execute such order in larger numbers as may be decided by the Commissioner of Police. If any cost is to be paid for such purpose by the petitioners, the same will be intimated by the police authorities.

With these observations, the writ petition is disposed of.

Urgent photostat certified copy of this order be supplied to the parties,
if applied for, as early as possible.

(Jay Sengupta, J.)

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