

D/L- 24
27/03/2025
Ct. No.-6
Aritra

C.O. 1062 of 2025

**Subodh Kumar Sain
Vs.
Benimadhab Das**

Mr. Subrata Bhattacharya
Ms. Shipra Santra
...for the petitioner

Mr. Amit Dey
Ms. Ritoma Sarkar (Paul)
....for the opposite party

This application under Article 227 of the Constitution of India is at the instance of the judgment debtor and is directed against an order dated December 21, 2024 passed by the Civil Judge (Jr. Div.), 2nd Court, Durgapur in Title Execution Case No.6 of 2019 arising out of Title Suit No.72 of 2015.

The opposite party herein filed a suit for eviction and for recovery of khas possession. The suit was decreed.

The petitioner preferred a title appeal therefrom which also stood dismissed. The learned advocate appearing for the petitioner, in his usual fairness, submits that the second appeal filed by the petitioner also stood dismissed. He however, submits that liberty was granted by the Hon'ble Division Bench to take appropriate steps in accordance with law against the order rejecting the application under Section 47 of the Code of Civil Procedure. He further submits that the

petitioner has filed an application under Section 47 of the Code of Civil Procedure raising an objection as to the executability of the decree on the ground that the decretal property is not identifiable. He submits that for the purpose of identifying the suit property local inspection is necessary and for such reason an application under Order 39 Rule 7 of the Code of Civil Procedure was filed.

The learned Executing Court by the order dated December 21, 2024 rejected the application under Section 47 of the Code of Civil Procedure as well as under Order 39 Rule 7 of the Code.

Heard the learned advocate for the opposite party on such submission.

The learned Executing Court took note of the submission of the judgment debtor that the decree holder attempted to execute another property other than the decretal property but noted that the petitioner failed to prove such allegation. The learned Executing Court also noted the bailiff submitted the report dated January 29, 2023 wherefrom it does not appear that the bailiff could not identify the decretal property.

The decree holder filed an application under Rule 208 of the Civil Rules and Orders on the ground that the decree cannot be executed without police help as the bailiff was resisted at the time of execution of the decree.

After hearing the learned advocate for the respective parties and upon going through the materials on record this Court does not find that any local inspection is necessary for the purpose of identifying the decretal property. There is no substance in the contention of the petitioner that the decretal property is not identifiable.

For such reason, this Court is not inclined to interfere with the order impugned. CO 1062 of 2025 accordingly, stands dismissed.

There will be no order as to costs.

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

(Hiranmay Bhattacharyya, J.)