

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.1859 of 2023

Arup Halder

VS.

Sujoy Kumar Saha

For the petitioner :Mr. Soumyadeep Biswas, Adv.

For the Opposite Party no. :Mr. Tapash Kumar Bhattacharya, Adv.
Mr. Aviroop Bhattacharya, Adv.
Ms. Sahima Mollah

Last Heard On :02.01.2025

Judgement On :13.02.2025

Bibhas Ranjan De, J. :

Prologue:-

1. Pre-emptor/opposite party herein filed an application for preemption under Section 8 of the West Bengal Law Reforms Act (for short WBLR Act) which was allowed by the Jurisdictional Court i.e. Learned Civil Judge (Junior Division), Tehatta, Nadia.

2. Pre-emptor/petitioner herein being aggrieved, assailed the said order before the Appellate Court i.e. Learned Additional District Judge, Tehatta, Nadia. Said appeal is awaiting resolution.
3. Having knowledge of execution case where an order of police help was passed, petitioner/judgement debtor filed three applications for recalling the order of police help and seeking an opportunity of being heard by filing written objection.

Assailed Order:-

4. Learned Trial Judge rejected all applications filed by petitioner/ judgement debtor holding, *inter alia*, that after registering the execution case writ of delivery of possession was issued but Nazir was resisted by the petitioner/ judgement debtor. Thereafter, opposite party/DHR filed application for police help which was allowed by the Court after ascertaining cost for police help as well as after examining witnesses.
5. Learned Trial Judge further recorded his findings to the effect that petitioner/judgment debtor appeared on 19.05.2022 after lapse of three years from the date of his knowledge of execution when the Court bailiff visited subject property for

execution of writ. That apart petitioner/judgment debtor neither filed any application for stay nor preferred any appeal against contested judgment passed in preemption case.

6. Being aggrieved the petitioner/judgment debtor filed this civil order under Article 227 of the Constitution of India.

At the Bar:-

7. Ld. Counsel, Mr. Soumyadeep Biswas, appearing on behalf of the petitioner has drawn my notice to the order dated 10.07.2019 whereby the prayer for police help was allowed.
8. It is contended that the order dated 10.07.2019 did not comply the mandates of the provision of Rule 208 of Civil Rules and Orders of the High Court (for short C.R.O.), Calcutta by not assigning any reason whatsoever.
9. Again it is submitted that the Ld. Trial Judge denied the right of opposite party of being heard according to mandates of Rule 208 of C.R.O.
10. In support of his contention, Mr. Biswas has cited the following cases:-

- ***Ajit Kumar Ray vs. Jnanendra Nath Dey*** reported in **1975**
0 Supreme (Cal) 263

- ***Dwarikanath Chowdhury vs. Sadananda Chowdhury*** reported in **2003 2 CHN 340**

11. In opposition to that, Ld. Counsel, Mr. Tapash Kumar Bhattacharya, appearing on behalf of the opposite party/Dhr has contended that no notice is required to be served upon the judgment debtor in an execution case filed within two (2) years from the date of passing decree. So, question of opportunity of being heard does not arise. That apart, it is submitted, that order of granting police help is backed by reasons.

12. In support of his argument, Mr. Bhattacharya has relied on the following cases:-

- ***Anjali Das vs. Suman Ray*** reported in **2010 (2) CLJ Cal 854**
- ***Laltu Mallick vs. Mintu Mallick*** reported in **2013 (1) CHN (CAL) 68**
- ***Ranjit Barman vs. Arati Barat and others*** reported in **2019 0Supreme (Cal) 260**

Exposition:-

13. Only contentious issue in this revision is the legality of the impugned order. Therefore, I would like to reproduce the order impugned below:-

“Misc. Ex.- 01/2017

Order No. 39

Dated: 10-07-2019

Today is fixed for order.

Decree-holder files a petition praying for police help under Rule 208 C.R.O read with Section 151 C.P.C.

It is pertinent to mention that the Court-Bailiff could not execute the decree.

The Dhr. Prayed, one armed Assistant Sub-Inspector, and two armed constables and one armed lady constable to execute the decree.

Hence, the prayer of the decree-holder is allowed.

Let a copy of this order be sent to S.P.Nadia.

BC-II is directed to send the copy of order to the S.P. Nadia as soon as possible.

Fixed 01/10/19 for report from the S.P. Nadia regarding the police cost.”

- 14.** Next, I would like to reiterate the specific provision of Rule 208 of the C.R.O for the sake of brevity in our discussion.

“Rule 208:-

- (1) A decree holder praying for police help in execution shall state in his application the full reasons thereof, supported, if required, by an affidavit. The court may further examine the decree holder or such other persons as it thinks fit touching the necessity of police help. If upon consideration of all the facts and circumstances, the Presiding Judge is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger to the public peace, he may, after recording his reason for so doing, make a request to the Superintendent of Police of the District for such police aid as the latter may be able to give in the execution of the writ It is to be understood that police help is to be regarded as an extreme step and it should not be recommended unless the Court is fully convinced of the existence of a grame emergency.

(2) The requisition to the Superintendent of police should state in brief the need for such aid, the number and rank of men required, the nature of the process and the place where it is to be executed. It will be for the Superintendent of police to decide how best and when he will be in a position to offer the help sought

(a) Costs for police help shall be charged in executing decrees in cases where such help is considered necessary because of apprehensions of violence or obstruction from the judgment-debtor himself. The party concerned shall be ordered to deposit such costs for the service as the Superintendent of police may require under the rules of the department.

(b) Costs of police aid shall not be levied in cases where police help is required because of conditions of a general character, such as the locality being in a disturbed state or a class of people, similarly situated, being likely to make a common cause with the judgment-debtor and resist execution.

(c) In cases where a levy of costs is ordered, such costs shall be added to the costs of execution.

Note 1.- It shall be the duty of the Court to decide in each case under which category it falls, that is whether police aid should be given under clause (a) above in which case the party has to deposit necessary costs or under clause (b) in which case no costs are to be charged.

Note 2.- police aid shall not be requisitioned or taken in effecting the arrest of judgment-debtors unless it is clear that no other means will possibly achieve the required result.”

15. A bare perusal of the order impugned dated 10.07.2019 clearly reveals a lack of reason. That order was passed in disposing of an application under Rule 208 of C.R.O. filed by the opposite party/Dhr.

16. It is trite law that, every Court must pass reasoned and speaking order for expeditious justice in a meaningful manner. A reasoned judicial order is a Court decision that is supported by reasons and is also known as speaking order.
17. A reasoned judicial order ensures fairness and transparency in the decision making process. It also helps to build public confidence in the judicial system.
18. Proper reasoning is required for any order that is subject to appeal or judicial review. It also ensures that the reasons can be appropriately considered by appellate or higher courts.
19. In ***Ranjit Barman*** (supra) Hon'ble Co-ordinate Bench of this Court dealt with an issue where Jdr was well aware of the order exempting separate notice of the application under Rule 208 of the C.R.O. upon him. Not only that, suit premises was already handed over by the bailiff, with police help, to the decree holder/opposite parties, in due process of law unlike the situation of the case at hand.
20. ***Anjali Das*** (supra) handed down the theory that in case of grant of police help under Rule 208 of the C.R.O., the Court cannot grant police help without recording his satisfaction with regard to the existence of reasonable apprehension regarding

breach of public peace and tranquility in the locality in the process of such execution. It was further held that the obstructor's right of hearing in connection with the proceeding for grant of police help under Rule 208 of the C.R.O cannot be denied.

21. In an unreported case Hon'ble Co-ordinate Bench of this Court in C.O. 199 of 2018 (***Reba Mandal vs. Smt. Sandhya Paul & another***) held that police help under Order 208 of the C.R.O cannot be granted without being satisfied that the resistance was of such magnitude that if the decree was sought to be executed then there will be danger to the public peace.

22. *Laltu Mallick* (supra) dealt with an order complying all conditions of the provision of Rule 208 C.R.O unlike the order impugned in the revision application at hand.

23. *Ajit Kumar Ray* (supra) and ***Dwarikanath Chowdhury (supra)*** also ratified the obstructor's right of hearing in a proceeding under Rule 208 of the C.R.O in terms of principle of natural justice as well as satisfaction of the Court about danger of breach of public peace.

24. Taking risk of repetition, I find no other alternative but to hold that the order impugned in this revision application suffers

from illegal exercise of power under Rule 208 of the C.R.O. by not assigning any **reason** whatsoever with regard to **satisfaction** about the fact of serious danger to the public peace.

Epilogue:-

- 25.** As a sequel, the Order No. 39 dated 10.07.2019 along with all subsequent orders including the Order no. 59 dated 01.03.2023 are hereby set aside.
- 26.** Learned Trial Judge is requested to rehear the application under Order 208 of the Civil Rules and Orders after giving an opportunity of hearing to both the parties and dispose of the petition strictly in compliance with the provision of Rule 208 of the Civil Rules and Orders.
- 27.** Considering the period of pendency of the matter, Learned Trial Judge is requested to dispose of the application preferably within eight (8) weeks from the date of communication of the Order and also to give an opportunity to the petitioner/Jdr to file written objection within one (1) week from the date of communication of the order.
- 28.** It is, however, made clear that while disposing of the revisional application, this Court has not considered the merit of the

application under Rule 208 of the Civil Rules and Orders filed by the opposite party/Dhr.

- 29.** As a sequel, the instant revision application being no. C.O. 1859 of 2023 stands disposed of.
- 30.** Interim Order, if there be any, stands vacated.
- 31.** Connected applications, if there be, also stand disposed of accordingly.
- 32.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.
- 33.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]