

02-05-2025  
Item no.26  
**Subrata**  
Bhattacharyya  
AR(C)

**IN THE HIGH COURT AT CALCUTTA**  
Civil Revisional Jurisdiction

**CO No.3593 of 2024**  
**Manoj Kumar Paul**  
**-vs-**  
**Arabinda Paul & Anr.**

Mr. Nirmalya Ray, adv. ...for the petitioner

Mr. Gopal Chandra Ghosh, sr. adv.  
Ms. Sunandana Saha, adv....for the opposite parties

This application under Article 227 of the Constitution of India is at the instance of the decree-holder and is directed against an order dated June 28, 2024 passed by the learned Civil Judge (Junior Division) in Title Execution Case No.4 of 2023 arising out of Title Suit No.111 of 2015.

By the order impugned an execution application was rejected on the grounds that the same was barred by limitation.

Learned advocate for the petitioner places reliance upon a decision of a coordinate Bench of this court in the case of **Panka Lal Bag v. Santosh Kumar Sikdar** reported at **AIR 1984 CAL 232** in support of his contention that the limitation period as prescribed under Article 129 of the Limitation Act, 1963 would not apply in case of an application under Rule 208 of Civil Rules and Orders.

Mr Ghosh, learned senior advocate representing the opposite parties, submits that the petitioner has put the decree of permanent injunction into execution. By referring to the provisions of Order XXI Rule 32 of the

Code of Civil Procedure, 1908 Mr Ghosh would contend that such a decree can be executed either by detention of the judgement-debtor in the civil prison or by attachment of his property or by both. He submits that the execution application on the face of it is not maintainable in the eye of law.

In reply, learned advocate for the petitioner would submit that such an application is maintainable in view of the provisions laid down under Order XXI Rule 32(5) CPC.

After going through the impugned order, this court finds that the application under Rule 208 of the Civil Rules and Orders was rejected only on the grounds of limitation and that the issues raised by the learned advocates for the respective parties did not fall for consideration before the learned executing court.

In **Panka Lal Bag's** case (supra) it was held that the police help under Rule 208 of the Civil Rules and Orders can be availed of at any time even when breach of peace is apprehended or anticipated as an aid to execution and not the execution by itself and that the provisions of Article 129 of the Limitation Act have no application for resorting to such a special legal proceeding.

It appears that the petitioner filed an application under Rule 208 of the Civil Rules and Orders. In view thereof, by applying the proposition of law laid down in **Panka Lal Bag's** case, this court is inclined to interfere with the order passed by the learned executing court.

This court holds that an application captioned as one under Rule 208 of the Civil Rules and Orders cannot be said to be barred by limitation.

For such reasons, the impugned order is set aside.

The application under Rule 208 of the Civil Rules and Orders is restored to file of the learned Judge of the executing court.

The learned executing court is requested to consider the said application on merits and in accordance with law as expeditiously as possible without granting any unnecessary adjournment to either of the parties.

At this stage, Mr Ghosh would contend that though the application was captioned as one under Rule 208 of the Civil Rules and Orders, but the same is, in effect, an application under Order XXI Rule 97 CPC.

It is, however, made clear that this court has considered the issue of limitation by only noting the caption of such application without entering into the substance of the same. The issue as to whether the impugned application is in substance an application under Order XXI or Rule 208 of the Civil Rules and Orders shall be decided by the executing court at the time of hearing of such application.

It is further made clear that the issue of maintainability of the execution case is left open to be decided by the learned executing court in accordance with law, after giving an opportunity of hearing to the respective parties.

All parties are to act on the server copy of this order duly downloaded from the official website of this court.

Certified copy of this order, if applied for, shall be made available to the parties.

**[Hiranmay Bhattacharyya, J]**

