

Misc case 128/2022
T.EX 19/2022

Order no. 20 dated 06.03.2023

Today is fixed for passing of order in respect of the application dt. 25.01.2023.

Parties are represented by their respective hazira.

Let the case record be taken up for passing of order.

Heard. Perused. Considered.

By filing the instant application, the petitioner/Dhr has prayed for modification of order no. 14 dt. 21.01.2023 of this Court on the ground that the Dhr is not at all required to serve any summons upon the Jdr at the time of hearing of the application u/O 21 R 97 CPC when any execution case is filed within two years of passing the judgment and decree.

Per contra, the O.P/Jdrs by filing a WO have contended that the order no. 14 dt. 21.01.2023 is correct and does not require for any modification as no notice was served upon the Jdr at the time of filing the application u/O 21 R 97 CPC.

During hearing, the Ld. Advocate for the Petitioner/Dhr has submitted that the instant misc case is a supplementary proceeding of the title execution being no. 19/2022. He by drawing the attention of this Court towards the order 21 R 97 CPC has further submitted that the law says no notice is required to serve upon the Jdr when any execution case is filed within two years of passing the judgment and decree and from the evidence on record, it is apparent that strong resistance was made by the Jdr at the time of execution of the decree.. He has also submitted that the execution of a decree cannot be docked unless any stay is granted by the Ld. Appellate Authority in respect of the same. The Ld. Counsel has thus prayed for modification of order no. 14 dt. 21.01.2023 of this Court.

On the other hand, the Ld. Advocate for the O.P/Jdr by drawing the attention of this Court towards the provision of Order 21 R 105 CPC has submitted that application u/O 21 R 97 CPC must be heard after service of notice to the other side as the hearing of the same shall be treated under summons procedure. The Ld. Counsel has thus prayed for rejection of the instant application for its being infructuous.

Considering the application dt. 25.01.2023, WO, submissions of both sides and the provision of law, this Court in conformity with the Ld. Advocate of the O.P/Jdr is of the view that the essence of natural justice shall be highly frustrated if the application under order 21 R 97 CPC shall be heard sparingly at once without giving any opportunity to the Jdr for hearing. The legal mandate under 21 R 105 CPC strongly reprimands the same.

Accordingly, it is

ordered

that the application dt. 25.01.2023 praying for modification of order no. 14 dt. 21.01.2023 be and the same is hereby rejected on contest without any order as to costs.

To **01.04.2023** for WO and if possible cross-examination of PW1.

Considering the age of the Dhr, parties are directed to not to take unnecessary adjournments in this case.

Dictated & corrected by me

**Civil Judge(Jr. Divn.), 4th Court,
Sermapore, Hooghly**