

Misc Case no.01/2023

T Ex. No. 15/2022

Order no. 9

Dated :-04.07.2023

Ld. Advocate for the D.Hr. is present and files *hazira*.

This day is fixed for evidence of process server.

The record is taken up for passing necessary order towards disposal of the petition filed by the D.Hr. On 22.02.2023 *inter alia* praying for police help towards execution of the decree in TS 161/2017 of this court with the help of police.

The aforesaid application got registered as Misc Case 01/2023 before this court. OP/J.Dr did not appear before this court.

The petitioner claimed by way of this petition that on 17.12.2022 when the Court bailiff when to execute the decree passed in his favour in TS 161/2017, the J.Dr. resisted and the possession of the suit property remained undelivered upon the decree holder. It is also asserted that the J.Dr. also threatened the bailiff of not handing over the possession of the suit property. Accordingly, by filing the instant Misc case he had prayed for providing police help for complete execution of the decree at his own cost.

The petitioner of this case adduced Bappaditya Sarkar, the process server of this court as PW 1.

The petitioner produced the report of the process server as documentary evidence in support of this case which is marked as exhibit 4 and his signature was marked as exhibit 4/1. He also produced the signature of the D.Hr, scribe and the witnesses in whose presence the D.Hr made an endorsement in this case which was marked as exhibit 1, exhibit 2 and exhibit 3 collectively.

Decision with reason

On perusal of the document filed on the record as well as oral testimony of the process server appointed by this Court, it appears that the J.Dr. obstructed the process server at the time of delivery of possession of the suit property. PW 1, the process server identified his report and signature filed in this case and also admitted the fact of resistance offered of the J.Dr. at the time of delivery of possession. Thus, he corroborate the facts stated in the petition.

On perusal of the record it appears that the original Title Suit being no. 161/2017 was decreed in favour of the plaintiff and the defendant is restrained from entering into the suit property and causing any disturbance in the peaceful possession. So, the plaintiff/D.Hr filed the present execution case for executing the said order passed by this court. This court accordingly, sent a Court bailiff to deliver the possession but failed to do so as it appears from the report and returned the writ unexecuted.

Accordingly, finding merit in the instant petition I am inclined to allow the petition. If the same is not allowed the petitioner would suffer loss and the possession of the suit property will remain undelivered.

Hence, it is

ORDERED

that the present Misc Case be and the same is allowed on ex parte

SP, Jalpaiguri, is requested to ascertain the probable cost of the police personnels of various rank required for assistance as sought by the D.Hr./Petitioner for execution of the decree. The S.P., Jalpaiguri, is further requested to clearly state the specific head on which such cost is to be deposited.

D.Hr./Petitioner is directed to file a copy of the petition dt. 22.02.2023 forthwith.

On compliance by the D.Hr./Petitioner, let a copy of this order along with that of the petition dt. 22.02.2023 be sent to the good office of the SP, Jalpaiguri, for his information and necessary action.

Inform the D.Hr./petitioner.

Fix 01.09.2023 for report from the office of the SP, Jalpaiguri in compliance with this order.

Dictated and corrected

by me:

(Smt. Moumita Mitra)
Civil Judge (Junior Division),
2nd Court, Jalpaiguri.
(J.O. Code No.WB01409)

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