

Title Execution Case No. 47 of 2023

Present : Jayashree Banerjee, Chief Judge (WB 01049)

Order No. 17 dated 29.08.2024 :

This is an application under Rule 208 of Civil Rules and Orders filed by the decree holder.

The said application is being contested by the judgement debtor by filing written objection.

Ld. Counsel for the decree holder submitted that the judgement debtor has no right to contest an application Rule 208 of Civil Rules and Orders as the judgement debtor/defendant was contesting the suit and the right of the judgement/debtor/defendant has been declared by the concerned Court which heard the suit and passed the judgement decreeing the suit in favour of the decree holder. Since the judgement debtor refused to hand over the property to the decree holder, the execution case was filed for executing the decree and along with the said execution case, application under Rule 208 of Civil Rules and Orders has been filed where notice was also not required to be given to the judgement debtor who all along had been contesting the suit. If the judgement debtor wanted to raise any issue, the same ought to have been done by filing application u/s 47 of the Code of Civil Procedure which the judgement debtor did not choose to file. In the given circumstance, the judgement debtor cannot raise any question where an application under Rule 208 of Civil Rules and Orders has been filed.

In reply to such submission of the Ld. Counsel appearing for the decree holder, Ld. Counsel Mr. Avijit Roy appearing for the judgement debtor invited the attention of this Court to some decisions of the Hon'ble High Court, Calcutta both reported and unreported.

Firstly, an unreported order was placed before this Court that was passed by the Hon'ble Justice Sabyasachi Bhattacharya in C.O. No. 2820 of 2018 in Bhol Nath Kundu – vs – Radhashyam Gupta.

Ld. Counsel after handing over the copy of the said order, invited the attention of this Court to some portions of the order where from it appears that the Ld. Trial Court did not fix any date for hearing of an application under Rule 208 of Civil Rules and Orders, on the ground that since there is no provision for registering an application under Rule 208 of Civil Rules and Orders as a miscellaneous case, therefore no date could be fixed for hearing of such application and the Hon'ble Court finding such reasoning of the Ld. Trial Court absurd

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set aside such an order holding that such observation of the Trial Court amounting to prejudging the application under Rule 208 of Civil Rules and Orders which is not permissible in Law and therefore directed the Ld. Trial Court to hear out the application filed under Rule 208 of Civil Rules and Orders pending before the Trial Court as expeditiously as possible upon fixing a date for hearing of the same without granting any unnecessary adjournment to either of the parties.

I failed to understand why this judgement has been cited before this Court as the Hon'ble Court did not decide that the judgement debtor is required to be heard while disposing of an application under Rule 208 of Civil Rules and Orders framed by the Hon'ble Court,

For brevity of discussion, Rule 208 of Civil Rules and Orders is quoted herein below :-

*(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 a 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 recoding 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 grave 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 of 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 judgement-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 for 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 stated or a class of people, similarly situated, being likely to make a common cause with the judgement-debtor.*

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

A bare reading of the Rule 208 of Civil Rules and Orders shows that before allowing a prayer for police help made by the decree holder before the Executing Court, the Court upon consideration of all the facts and circumstances if is of the clear opinion that there are reasonable grounds to suppose that execution will not be effected without serious danger of the public peace, Court may after recording its reason for so doing, make a request to the Superintendent of Police of the district for such police aid as the letter may be able to give in the execution of the writ. For such purpose, Court may examine the decree holder or such other persons as it thinks fit touching the necessity of the police help. The Rule nowhere requires that the judgement debtor should be given an opportunity of being heard or cross examine any person, the decree holder might produce before the Court to substantiate his/her need to prefer the application for police help before the Executing Court.

Having opined thus, this Court will now discuss the next judgement as has been cited by the Ld. Counsel Mr. Avijit Roy appearing for the judgement debtor.

The next judgement is a reported judgement of the Division Bench comprising of the Hon'ble Justice Bhagabati Prosad Banerjee and Mr. Justice Sachi Kanta Hazari reported in 1991 (1) CLJ 434. This judgement deals with Order 21 Rule 24(3) of the Code of Civil Procedure and Order 21 Rule 97 of the Code of Civil Procedure read with Rule 208 of Civil Rules and Orders and Section 47 of the Code of Civil Procedure.

Having carefully gone through the said judgement, this Court found that the facts and circumstances of the reported judgement delivered in Smt. Usha Singh – vs – Rabindra Nath Das & Ors. by the Hon'ble Division Bench did not lay

down any Law as regard whether or not the judgement debtor being the defendant himself obstructing delivery of possession of the Bailiff should be given any hearing in an application filed under Rule 208 of Civil Rules and Orders. In the reported judgement as quoted herein above an illegal dispossession was restored by the Court where in an application under Rule 208 of Civil Rules and Orders, no order was passed by the Ld. Munsif, but an order was obtained from the Executive Magistrate pursuant to which the judgement debtor was ousted with the help of police during pending of an appeal preferred by the judgement debtor. I therefore very humbly opine that this judgement also has no bearing with the facts and circumstances of the instant case being dealt by this Court.

Ld. Counsel for the judgement debtor next cited a decision reported in 2013 Vol.1 CHN (Cal.) 63 delivered by the Hon'ble Justice Sanjib Banerjee in C.O. No. 1001 of 2012 in Laltu Mallick – vs – Mintu Mallick.

Having cited the said reported decision, attention of this Court was invited to paragraphs 2 and 3 of the said judgement, both quoted herein below for brevity of discussion.

*“2. The Executing Court took a view that in the light of the judgement reported at 2002 (2) WBLR (Cal) 72, the application under Rule 208 should be registered as a case under Order 21 Rule 97 of the Code. The Executing Court proceeded to register the case as such and declined to consider the prayer for police help for the purpose of facilitating the execution of the decree obtained in a partition suit.*

*3. The petitioner refers to a recent judgement of this Court reported at 2009 (1) WBLR (Cal) 826 where the longstanding practice as recognised in the previous Judgements reported at AIR 1957 Cal 252 and AIR 1984 Cal 232 was noticed. It was held in the said recent Judgement that Rule 208 and Order 21 Rule 97 may appear to be similar, but Rule 208 has an independent area of operation. Indeed, the 1984 judgement had succinctly spelt out the distinction that was first noticed in the 1957 report. It is also evident that for an application under Order 21 Rule 97 to be made there is some form of resistance which must be faced by the decree holder. However, in invoking Rule 208 of Civil Rules and Orders, it is sufficient that there is a reasonable apprehension on the part of the decree holder that the attempt at*

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*execution would be resisted. Indeed, the later part of rule 208, which provides for payment of costs to the police, recognises there could be generic reasons for seeking and obtaining police assistance. It is possible that a particular area is disturbed or a class of persons would be likely to espouse the cause of judgement-debtor and resist the decree holder's attempt at obtaining possession. Rule 208 covers several situations that could arise. As has been held in the 1957 judgement referred to above, the Court must proceed with utmost caution before allowing police help since a decree-holder obtaining police help would be able to dispossess lawful occupiers from the property and the fact such lawful occupiers have a right of repossession under Order 21 Rule 100 of the Code would be of little solace."*

Having invited the attention of this Court to the above quoted paragraphs, it was submitted by the Ld. Counsel Mr. Avijit Roy that an application under Rule 208 of Civil Rules and Orders should be registered as a case under Order 21 Rule 97 of the Code of Civil Procedure. Ld. Counsel next submitted that the exercise of authority under Rule 208 of Civil Rules and Orders in the absence of persons against whom the order is directed would amount to a breach of the principles of natural justice. Ld. Counsel therefore concluded the judgement debtor, his client should be given an opportunity to cross examine the Bailiff and/or the persons whom the decree holder seeks to present before this Court in support of his prayer for police help made under Rule 208 of Civil Rules and Orders.

In reply to the submissions of the Ld. Counsel appearing for the judgement debtor, Ld. Counsel Mr. Kashinath De referred to the same judgement delivered by the Hon'ble Justice Sanjib Banerjee and invited the attention of this Court to paragraph 5,6 and 7 where the Hon'ble Court opined that the principles of natural justice would have limited operation in case of a person who is in default and against whom execution proceedings have had to be levied for enforcing of order and decree, it appears that the judgement in the 2002 case did not notice the previous authoritative dicta in the 1957 and 1984 reports. To the extent that such judgement in the 20002 report is at variance with the opinion expressed in the 1957 and 1984 cases, such judgement therefore cannot be regarded as good Law.

Since the application was made by the decree holder ex-parte and no notice of the application has yet been issued and since there is no embargo on a Court to

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pass an ex-parte order under Rule 208 of Civil Rules and Orders, the judgement debtors have not been required to be served.

Having recorded the submissions of the Ld. Counsels appearing for the parties, and having regard to the fact that the judgement debtor has been served with the application under Rule 208 of Civil Rules and Orders who expressed his willingness to cross examine the Bailiff and any other persons whom the decree holder sought to adduce as witness before this Court in support of his prayer of police help, this Court allows the judgement debtor to contest the application under Rule 208 of Civil Rules and Orders before this Court proceeds to pass any order in the said application.

Hence, the matter for police help is fixed for contested hearing on 18.09.2024 and it is made clear if the Ld. Counsel for the judgement debtor fails to appear on the date fixed for hearing of this application or seeks for adjournment on any ground even if it is for personal difficulties of the Ld. Counsel, this Court shall reject of such prayer and proceed that the hearing of the application under Rule 208 of Civil Rules and Orders as filed by the decree holder.

Let the matter come up for contested hearing on 18.09.2024.

Dictated & corrected by me,

Chief Judge

Chief Judge  
City Civil Court, Calcutta.