

Ejectment Ex. Case No. 55 of 2025
CIS No. WBPS01-000238-2025

Order No. 05

Dated 16.09.2025

Today is fixed for steps by the decree holder.

The DHR is present today by filing hazira.

Now record is taken up for hearing of the petition under Section 208 of C.R.O. r/w Section 151 of the CPC filed by the decree holder dated 08.08.2025.

Perused the application under Order-208 of CRO r/w Section 151 of the CPC.

It appears that on 23.07.2025 when the Seal Bailiff of the Court had gone to the decretal premises to deliver the khas possession of the decretal premises as per the order of the court, he was resisted by the agent of the judgment debtor and his men and associates. It is alleged that they refused to vacate decretal premises and resisted the Seal Bailiff in executing the decree, which led to the apprehension of breach of peace, hence, the writ could not be executed. Thus, the decree holder submits that the writ cannot be executed without the assistance of the police personnel, and, as such, prays for direction of the police assistance to execute the writ of possession.

Now at this juncture, it is important to look at the provisions of Order-21, Rule-97 of C.P.C. and Rule 208 of C.R.O. for better understanding of the situation.

Under-21, Rule-97 provides where the decree for possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

Whereas the provision of Rule-208 C.R.O. states that 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

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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 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 grave emergency.

The application for police help is not an application for execution within the meaning under Order-21, Rule-97 of CPC. The person seeking to execute a decree will make an application under the above provision if he is actually obstructed or resisted in the course of execution, but under rule-208 of CPC the situation is entirely different. Such provision can be invoked where there is reasonable apprehension of breach of public peace that the decree cannot be executed without the police help because of the conduct of the persons occupying the premises, may either be the judgment debtor or any other person.

As already mentioned above, in the instant case there is not only apprehension that the writ can not be executed without the possibility of breach of peace as required under Rule 208 Civil Rules and Orders, but the Seal Bailiff has already been resisted by the resistor/judgment debtor while executing the writ of possession and, as such, the writ cannot be executed without resorting the mode of police help in terms of provision of Order 21, Rule-97 of CPC.

Thus, in the light of the above discussion, though the instant application has been filed under Rule 208 of CRO, but in its essence, it is an application under Order 21, Rule-97 of CPC where the execution process has already been resisted and obstructed. It would not be out of place to mention here in this context that mere mis-quotation or non-quotation of the provision of law should not come in the way of providing efficacious relief to the party approaching a Court of Law and it should be the contents of an application that should be looked into.

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Therefore, this Court finds it appropriate to consider the instant application as one under Order-21, Rule -97 of CPC r/w Rule-208 of CRO and register the same as a Miscellaneous Case in terms of relevant provision of CRO.

BC-I (3rd Bench)/Office to do the needful at once.

The judgment debtor/resistor has already been served the copy of the above application, hence there is no necessity to issue summons upon them.

To **11.11.2025** for hearing of the misc case.

Office to do the needful at once to treat the instant application as a Misc. Case u/O-21, Rule-97 of C.P.C.

Dictated and corrected by me:

Judge

Smt. Glady Bomjan
(J.O. Code: 01039)
Judge, 3rd Bench
Presidency Small Cause Court,
Calcutta