

**EJECTMENT EXECUTION CASE NO. 71 of 2023**  
**CNR NO. WBPS01-000296-2023**

**Order No. 07**  
**25.04.2024**

Today is fixed for consideration of the petition under Rule 208 of CRO dated 08.12.2023 filed by the decree holder.

The decree holder is present by filing hazira.

Now the petition is taken up for consideration.

Under the captioned application the decree holder has stated that on 24.07.2023 at about 3.15 p.m. when the Court's Seal Bailiff went to the decretal property to execute the decree passed in Ej. Suit No. 239 of 2019, the Constituted Attorney of the decree holder identified the decretal property and when the Court Bailiff tried to execute the writ of possession, few persons were found inside the decretal shop room who refused to disclose their identity and instead they obstructed the Seal Bailiff from executing the said decree. Pursuant to such resistance made by those men and agents of the judgment debtor the Seal Bailiff could not execute the writ of possession due to apprehension of breach of public peace and tranquility and he has filed report to that effect.

In the above premises, the decree holder by filing the application Under Rule 208 of CRO submits that the decree passed in favour of the decree holder cannot possibly be executed without the help of police and, as such, the decree holder prays for passing necessary order granting police help comprising of 2 Sub-Inspector, 1 Sergeant, 3 Constables and 2 Lady Constables at the time of execution of the decree by the Court Bailiff along with other ancillary reliefs in this regard.

The Ld. Advocate for the decree holder has relied on the decision reported in **AIR 2009 CAL 82** along with the decision reported in the case of **Sree Laxmi Kanta Senapati -vs- Mintu Karar in C.O. No. 2774 of 2018** in support of his submission that the instant petition shall be allowed simplicitor without invoking the provision of Order – 21, Rule-97 of CPC.

Hd. Ld. Advocate for the decree holder.

Perused the petition and materials on record and the decisions referred above.

On perusal of the Bailiff Report it is found that the Court Bailiff has specifically mentioned in his report that on 24.07.2023 when he went to the decretal property to execute the decree passed in Ej. Suit No. 239 of 2019, he was strongly resisted by the men and agents of the judgment debtor for which he could not execute the decree and there was apprehension of serious breach of peace and the Constituted Attorney of the decree holder was present at the relevant time who has also put his endorsement in the said report. That apart,

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one Prabir Kumar Bera has signed on the said report as a witness.

Considering the above report, this Court finds no reason to disbelieve the contention made in the said report and there is sufficient materials to presume that there is every probability of breach of peace at the time of execution of the decree passed by this Court in favour of the decree holder.

The Hon'ble Court in the case of **Smt. Bandana Das and Another -vs- Saroj Kumar Da** reported in **AIR 2009 CAL 82** has clearly held that Rule – 208 of CRO provides for situation in case of “**Resistance to Execution, (both anticipated and actual)**” and the Rule has been specifically provided to enable the Court to pass necessary order for police help for execution of decree even where Resistance to Execution was merely anticipated.

However, in the present case, the report of the Bailiff shows actual resistance made by the men and agents of the decree holder and borrowing the wisdom from the above referred decision, this Court finds no hesitation to hold that the fact and circumstances of the present case clearly suggest the necessity of awarding police help to the decree holder at the time of execution of the decree passed in his favour.

In this context, I find it appropriate to refer to a decision of the Hon'ble Calcutta High Court passed in C.O. No. 2852 of 2012, wherein the Hon'ble Court was pleased to observe that the Ld. Trial Court was not justified in rejecting an application under Rule – 208 of CRO on the ground that the decree holder did not attempt to establish by oral evidence the basis of his apprehension that there would be resistance to the decree holder seeking to execute the decree for obtaining possession of an immovable property.

In the above referred the case the Hon'ble Court clearly held that clerical approach should not be adopted by the Court even after noticing that in case of attempted execution the Court Bailiff had been resisted and obstructed by the judgment debtor along with his men and agents who stubbornly resisted the Court's Bailiff attempt to make over possession of the decretal property to the decree holder. The Hon'ble Court further held that the Court should be mindful that the decree passed should be permitted to be enjoyed and the decree holder should not be required to go through another laborious round of fresh evidence to enjoy the fruit of the decree.

Similar view has also been taken by the Hon'ble Court in the case of **Sree Laxmi Kanta Senapati -vs- Mintu Karar in C.O. No. 2774 of 2018**, wherein the Hon'ble Court observed that there was no illegality in an order passed by the executing Court under and application Under Rule – 208 of CRO thereby granting police help to implement the decree, without there being any extreme exigency in such order or in the connected Bailiff's Report.

Therefore, borrowing wisdom from the above referred decisions this Court is of the opinion that the petition filed Under Rule – 208 of CRO justifies sufficient reason which is further supported by the report of the Bailiff

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to order for Police help in favour of the decree holder, even without resorting to the mode of recording evidence.

Hence, it is,

O R D E R E D,

That the petition under Rule – 208 of CRO is hereby allowed in exparte.

Officer-in-Charge of **Burrabazar Police Station** is directed to render police help by deputing **2 (two) Sub-Inspectors, 1 (one) Sergeant, 3 (three) Constables and 2 (two) Lady Police Constables** to assist the Seal Bailiff at the time of execution of the writ of delivery of possession passed in **Ej. Suit No. 239 of 2019.**

Petitioner to bear the cost for deputing police assistance as stated above.

Office is directed to do the needful in determining the cost for such police personnel as per Order No. **325, dtd. 24.11.2021** as per the then **Ld. Chief Judge, Presidency Small Cause Court, Calcutta.**

Fixing ..... for office report.

Dictated and corrected by me:

*Judge, 3<sup>rd</sup> Bench.*

**Smt. Sudipa Banerjee**

**J.O. Code: WB-01148**

***Judge, Presidency Small Cause Court,  
3<sup>rd</sup> Bench, Kolkata***