

MISC. CASE NO. 110 OF 2018
C. N. R. NO. WBPS01-000528-2018
Under Or.21 R.97 of C.P.C. read with Rule 208 of C.R.O.
Before Smt. S. Banerjee, Ld. Judge, 3rd Bench.

ORDER NO. 40 DATED 18.04.2023

Today is fixed for hearing of the petition dated 03.01.2023 under Sec.141 and Sec.151 of C.P.C. read with Or.6 R.17 of C.P.C. filed by the petitioner.

Both sides are represented through their respective ld. Advocates.

O.P. has filed written objections against the above petition.

O.P. has filed a petition seeking time to proceed with the hearing of the petition dated 03.01.2023 filed under Sec.141 and Sec.151 of C.P.C. on the ground stated therein.

Now, the petition dated 03.01.2023 filed by the petitioner under Or.6 R.17 of C.P.C. read with Sec.141 and Sec.151 of C.P.C. is taken up for hearing in presence of both sides.

The petitioner, by filing the above petition, submits that during the course of attempted execution by the Court Bailiff on 10.04.2018, the Seal Bailiff was resisted by one Mr. Tapas as appearing from the report of the Bailiff dated 10.04.2018. And, as such, the petitioner desires to add said Mr. Tapas as a party in the present case for proper adjudication. Hence, the application.

O.P. raised vehement objection by stating that the petitioner, by filing the instant petition, is only trying to fill up the lacunae of the case of the petitioner as P.W.I. has categorically disclosed, during his cross examination, that said Tapasbabu along with other men resisted the Seal Bailiff in executing the decree passed by this Court. It is also submitted that the instant petition has been filed at a belated stage and accordingly, the O.P. has prayed for rejection of the same.

Heard both sides.

Perused the materials on record.

Considered.

It is seen from the report dated 10.04.2018 of the Bailiff that one Mr. Tapas resisted the Court Bailiff during the course of attempted Execution and said fact has been categorically narrated in the application under Or.21 R.97 of C.P.C. which has given rise to the instant Misc. Case. Now, the petitioner only desires to add him as a party to the instant case for proper adjudication. Therefore, considering the contents of

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the instant application and the prayer made thereof, this Court finds that the instant petition is one for addition of a party rather than for amendment under Or.6 R.17 as captioned by the petitioner. It is settled position of law that mis quotation or non quotation of any legal provision should not come in the way of advancing substantial justice to a party approaching a Court of law and it is the contents of the petition and the prayer that is to be looked into.

Considering the above proposition of law in the facts and circumstances of the present case, this Court is inclined to allow this petition as one under Or.1 R.10(2) of C.P.C. read with Sec.141 and Sec.151 of C.P.C. for proper adjudication.

Since the petitioner has already mentioned in the petition under Or.21 R.97 that one Mr. Tapas resisted the Seal Bailiff, this Court is of the view that said Mr. Tapas is required to be added as a party in the present case for proper adjudication and accordingly, I am inclined to allow the present petition dated 03.01.2023 but subject to payment of cost of Rs.500/- to be paid by the Petitioner to the O.P. for causing unnecessary delay by not bringing the appropriate party in the present case at appropriate time when they had opportunity to do so at an earlier date.

Hence, it is ORDERED that the application dated 03.01.2023 filed by the petitioner for adding one Mr. Tapas as O.P. in the present case is considered and allowed on contest but with cost of Rs.500/- to be paid to the O.P.

Let Mr. Tapas be added as an O.P. in the manner provided in the petition dated 03.01.2023.

Petitioner is directed to take steps upon the added O.P. in both ways and file postal receipt and track report positively by thy next date.

Fix 03-07-2023 for S/R, A/D and filing of postal receipt and track report and payment of cost by the petitioner.

Dictated and corrected by me,

JUDGE

JUDGE
[3RD BENCH]

J.O. Code No. WB01148