

M.C 148 OF 2025
CNR NO. WBPS01-000537-2025

ORDER NO.15 dt. 17/07/2026

Today is fixed for exparte argument.

Petitioner / Dhr files hazira through his Ld. Advocate.

Opposite party / Judgment debtor has not taken any steps.
Heard argument in full.

Now the case record is taken up for passing order under order 21 rule 97 CPC read with rule 208 of CRO.

The instant Misc Case has been filed by Abdur Rahman being petitioners / decree holders against the opposite party / judgment debtor in terms of provision contained under order 21 rule 97 of the Code of Civil Procedure read with Rule 208 of Civil Rule and Order for getting possession of the decretal property with the help of police for execution of the decree passed in EJ suit no.410 of 2015.

After filing of this case, the notice was sent to the opposite party / judgment debtor and it was duly served upon the opposite party but none appeared and accordingly the suit runs exparte against the opposite party / judgment debtor vide order dated 10/02/2026.

Herein the case on behalf of the decree holder / petitioner one Abdur Rahman was examined as PW-1 whereas seal bailiff namely Avijit Chowdhury was examined as PW-2 to prove the case of the decree holder / petitioner.

The following documents have been marked as Exhibited at the time of evidence on behalf of the decree holder / petitioner.

Sl No.	Description	Exhibit
1.	Signature of PW-1 at the back of writ	Exhibit-1
2.	Signature of PW-1 at the back of writ	Exhibit-1/1
3.	Report of the Seal bailiff	Exhibit-2

As the case runs exparte against the judgment debtor / opposite party, they failed to take any steps and as such no evidence was adduced on behalf of the opposite party.

M.C 148 OF 2025
CNR NO. WBPS01-000537-2025

Record is taken up for passing order on the basis of materials on record.

The background of the case is that a decree was passed exparte on 18/01/2025 in Ejectment Suit no. 410 of 2015 in favour of the present petitioner / decree holder. Thereafter since the opposite party / judgment debtor did not deliver the possession of the decretal premises the petitioner / decree holder filed an execution case being no. EJ Exe 79 of 2025 for execution of the decree passed in Ejectment Suit no.410 of 2015. Since the application for execution of the decree had been filed within two years from the date of passing of the decree, there was no requirement for causing notice upon the opposite party / judgment debtor in execution proceeding in view of provision contained under order 21 rule 22 of the C.P.C.

It is stated by the petitioner / decree holder that the seal bailiff went to the decretal premises on 13/08/2025 at about 1:30 p.m to put the decree in execution by delivering it's possession to the petitioner/ decree holder but the seal bailiff failed to give possession of the decretal property due to resistance of the judgment debtor / opposite party. In the above situation, the seal bailiff could not execute the writ and petitioner / decree holder was compelled to initiate the instant proceeding under order 21 Rule 97 of the Code of Civil Procedure read with Rule 208 of the Civil Rules and Order read with section 151 of the Code of Civil Procedure for getting possession of the decretal property with the help of police and the same has been registered as the instance Misc Case being no.61 of 2025. Accordingly, the petitioner has prayed for execution of the decree with the help of police to the strength of police force consisting of **1 (one) Sub-inspector, 8 (eight) constables** for the purpose of execution and prayed for passing necessary order to that effect.

The **PW-2** is the court bailiff who corroborated the version of decree holder / petitioner in the petition as this witness in his evidence has stated that on 13/08/2025 at about 1:30 p.m he being to the decretal premises accompanied by Dhr Abdur Rahman and reached the decretal premises but due to resistance given by the judgment debtor Amitava Dey and apprehending breach of peace, he could not deliver possession of the decretal property so he reduced the

entire incident in writing and submitted the report before the Court which has been marked as Exhibit-2 as a whole. The PW-2 was not cross examined and as such entire version of PW-2 remained unchallenged.

The PW-1 is the decree holder who has filed evidence in affidavit in chief. The affidavit in chief filed by PW-1 is more or less replica of the application filed under order 21 rule 97 of the CPC read with Rule 208 of CRO. PW-1 Abdur Rahman, the petitioner of the instant case in his examination in chief has deposed that he is the decree holder / petitioner of the instant case and court bailiff went to the decretal premises for execution of the said decree but judgment debtor namely Amitava Dey who was present there resisted the seal bailiff in delivery of the possession of the decretal property and the seal bailiff could not execute the writ of the possession. He further deposed that the possession of the decretal property cannot be made without the help of police assistance. The petitioner was not cross examined and as such the version of the petitioner who was examined as PW-1 remains unchallenged.

After scanning the PW-1 and PW-2 on record under the fact and circumstances of the instant case it is found that the instant proceeding has been filed against the opposite party / judgment debtor who is refusing to deliver the vacant possession of the decretal property. It is deposed that the judgment debtor resisted the seal bailiff from executing the writ of possession and deliver vacant possession of the decretal premises despite being informed of the decree of the court and the bailiff has reported the court by filing a detail report to that effect. Upon perusal of bailiff report which has been marked as Exhibit-2, it is found that judgment debtor being occupant of decretal property has resisted the bailiff in executing the decree and apprehending serious breach of peace, the writ was returned un-executed, the writ of possession cannot be executed without the help of police assistance. The judgment debtor having no right and interest in the decretal premises have no right to resistance / obstruction to execution of the writ of possession. No evidence, eight contrary afore mention report of the bailiff marked as

Exhibit-2 or in rebuttal to the evidence of PW-1 and 2 was led by the opposite party.

The Hon'ble Apex Court has time and again deprecated the practice of prolonging the execution proceedings. In the instant case, the opposite party / judgment debtor failed to file W.O or contest the instant case.

Once a decree is passed and if not set aside of the Higher Forum, then it is the duty of the Executing Court to see the complete justice is done by executing the decree passed. The decree in favour of the petitioner / decree holder in Ejectment Suit no. 410 of 2015 was passed on 18/01/2025. Thereafter the decree was put into execution as the opposite party / judgment debtor did not deliver the vacant possession of the decretal premises. It appears that the opposite party / judgment debtor with the sole intention to prolong the execution proceeding and to deprive the petitioner as to enjoyment of the fruit of decree has been contesting the case.

In **Rahul S. Shah VS Jitendra Kr. Gandhi and Others, (2021) 6 SCC 418**, it has been held that the execution case should be completed expeditiously. The Hon'ble Apex Court noted the sorry state of affairs how the provisions of law were being misused to delay execution proceeding and the trouble of the decree holder is not being able to enjoy the fruit of litigation on account of inordinate delay caused during the process execution of the decree has been portrayed.

In view of the above discussion and consideration, I find that the writ of execution of possession cannot be executed unless the police assistance is provided to the petitioner / decree holder, hence the application under order 21 rule 97 of the Code of Civil Procedure read with Rule 208 of Civil Rules and Order being registered as Misc Case no.148 of 2025 filed by the petitioner should be allowed.

Hence, it is

ordered

that the application under order 21 rule 97 of the Code of Civil Procedure read with Rule 208 of Civil Rules and Order being registered as Misc Case 148 of 2025 filed by the decree holder / petitioner for getting possession of the decretal premises with the help of police

M.C 148 OF 2025
CNR NO. WBPS01-000537-2025

protection is hereby allowed exparte against the opposite party / judgment debtor but without any order as to costs.

Officer in charge of **Park Street Police Station** is directed to render police help by deputing **1 (one) Sub-inspector, 8 (eight) constables** to assist the seal bailiff at the time of execution of writ of delivery of possession passed in Ejectment Suit no. 410 of 2015.

Petitioner to bear the cost of 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 dt.24/11/2021 as per the then Ld. Chief Judge, Presidency Small Cause Court Calcutta.**

The instant Misc Case thus disposed off.

Note it in relevant registered and upload the copy of this Order in CIS at once.

D/C by me

Judge, Bench-4,
Presidency Small Cause Court

Judge, Bench-4,
J.O. Code no. WB01232