

EXECUTION :- 110 OF 2022
(CNR No. WBPS01-000623-2022)
(JO CODE No. WB01229)

Order No. - 14
Dt. 18.05.2023

Today is fixed for hearing of petition under Rule 208 of C. R. O.

Both sides file hazira.

Ld. Advocate for the Jdr. submitted before this Court that one petition under Section 151 of CPC was filed by the Jdr. on 17.05.2023 and prays for hearing of the stay petition.

Now the case record is taken up for hearing the petition dated 17.05.2023 under Section 151 of CPC filed by the Jdr.

Heard Ld. Advocate for the Jdr. who submitted before this Court that the instant application under Rule 208 of CRO is not applicable in the present facts and circumstances and the same will be applicable when there is endanger of public peace at the time of execution of the decree and no such incident was happened and the decree holder did not file separate Misc. Case under Order 21 Rule 97 of CPC which is proper procedure for getting police help and the decree holder cannot taken the plea under Rule 208 of CRO which is beyond the law and the instant application is not maintainable and after amendment of CPC the Jdr. or the third party would not be deprived as depicted under Order 21 Rule 97 of CPC and hence the instant application is not maintainable.

He referred the decision reported in **C.O. no. 237/2002 reported in 2003 (2) CHN 340** and submitted that since the Rule 208 of the Civil Rules and Order was very much long before the amendment of the protecting rights and resistance in execution of the decree, after amendment on interpretation of procedural law under Order 21 of CPC the Jdr. and/or third party who are termed as resistance would not be deprived of from getting the identical treatment of hearing and adjudication of such, even if any application if filed under Rule 208 of CRO.

Heard Ld. Advocate for the decree holder who submitted that as per Rule 208 of CRO, it has been mentioned in the said rule that the decree holder praying for police

help for execution shall state in his application the full reasons thereof supported, if required, by an affidavit and the Court may further examine the decree holder or such other person as it things feet touch on the necessity of police help and there is no embargo of the Jdr. to file any written objection or to the witness of decree holder or to adduce any evidence on behalf of regarding this contention and the instant application has been filed according to the proper procedure of law and hence the instant application is well maintainable and prayed for passing necessary order.

Considered. Perused the application under Rule 208 of CRO and the instant application filed by th Jdr.

On perusal of the materials on record, it appears that this court fixed the date of delivery of possession on 09.01.2023 in Execution No. 110 of 2022 and it has also been directed to the Seal Bailiff to open pad lock if any of the suit premises during the time of delivery of possession.

It also appears from the marginal note of the Bailiff that the writ of execution was not executed due to the strong resistance by one of the Jdr. After perusing the Bailiff report, it was appeared that Seal Bailiff has submitted his report stating that due to apprehending serious breach of peace, he could not deliver possession of the decree holder and also mentioned that at that time many curious people gathering around the spot.

It is fact that Rule 208 of CRO was made prior to amend of Civil Procedure Code and the same is to a certain extent conflicting with the provision of the principle of natural justice which is the basic fiver of administration of justice in terms of Order 21 Rule 97 of CPC read with other provision there in up to Rule 106 of CPC.

By Rule 208 of CRO, the rights of resistance as required to be adjudicated by procedure of Order 21 Rules 97 to 106 was taken away and thereby the court was vested with the uncannalised power to pass the necessary order of police help in favour of the decree holder to oust the judgement debtor or the third party to resisted or may resist the execution of the decree. Such provision accordingly is directly conflicts the rights as vested to the Judgement debtor or third party in terms of Order 21 Rule 97 to 106 of CPC. It is the basic principle of law that nobody to be ousted by taking resort to arbitrary procedure and as such the safeguard was introduced by Order 21 Rule 97

to 106.

Since the Rule 208 of CRO was framed long before the amendment of the CPC directing the right of the resistance in execution of the decree after amending on interpretation of procedural law under Order 21 Rule 97 of CPC. The Jdr. and/or third party who are terms of resistance would not be deprived of getting the identical terms of hearing and adjournment as such even if any application is filed under Rule 208 of CRO.

There is no explicit provision under Rule 208 of CRO refusing the right of the Jdr. and/or third party who would resist the execution or decree and/or decree to be heard before facing in the order of police help.

Further there is a provision of "may" whereby the Court was vested in the power to before him.

Hence, taken into action of statutory Rule under CRO providing right to be heard even the case of resistance in execution of decree and the principle of natural justice to be dealt as embedded in Rule 208 of CRO and the requirement of natural justice to be right into statute unless specifically executed exclusively or by necessary implication.

It appears that under Rule 208 of CRO there is no explicit explanation of following the principle of natural justice namely heard of affected party for the event of passing in police help before such order has passed and by necessary implication and also the same is not appearing in the statute.

In the aforesaid context the Jdr. against whom allegation was made about resistance of execution of decree is required to be heard even the executing Court is adjudicating the matter in terms of the application filed under Rule 208 of CRO and denied all such opportunities of hearing and application of the objection of Jdr. and accordingly, article 21 of the Constitution of India which provides that nobody to be deprived of his right within any fair procedural of law.

Here in this case, after filing the application under Rule 208 of CRO, Jdr. appeared of this case along with affidavit with opposition and there is ample opportunity of the Jdr. to be heard in respect of the application under Rule 208 of CRO

and there is no procedure as mentioned in the Civil Rules and Order and also in the CPC that the same application is treated as separate Misc. Case and Jdr. will get opportunity to cross-examine the evidence which will be adduced by the decree holder and also to produce his case before this Court according to law.

Considering the whole aspect of the material on record and after hearing the submission of both sides, there is no necessity to start the proceeding application of Rule 208 of CRO as a separate Misc. Case under Order 21 Rule 97 of CPC and hence, the instant application is not maintainable and is not tenable in the eye of law and the same is accordingly rejected.

Let the case be fixed for hearing of application under Rule 208 of CRO.

Both parties are hereby directed to be ready for hearing.

To 23.06.2023 for hearing of the application under Rule 208 of CRO.

[Dictated and corrected by me]

Sd/-
(Manabendra Nath Ghosh)
Judge, Bench – II,
Presidency Small Cause Court,
Calcutta.

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