

(2012) 06 CAL CK 0004

Calcutta High Court

Case No: C.O. No. 1001 of 2012

Laltu Mallick

APPELLANT

Vs

Mintu Mallick

RESPONDENT

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**Date of Decision:** June 28, 2012**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 21 Rule 100, Order 21 Rule 97

**Citation:** (2013) 1 CHN 63**Hon'ble Judges:** Sanjib Banerjee, J**Bench:** Single Bench**Advocate:** Aniruddha Chatterjee and Kushal Chatterjee, for the Appellant;**Final Decision:** Allowed

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### Judgement

Sanjib Banerjee, J.

The decree-holder has come up by way of the present revision against an order of March 5, 2012 by which the Executing Court declined to consider the merits of the decree-holder's application made under Rule 208 of the Civil Rules and Orders applicable in the State. The Executing Court took a view that in the light of the judgment reported at 2002 (2) WBLR (Cal) 72, the application under Rule 208 should be registered as a case under Order 21 Rule 97 of the Code. The Executing Court proceeded to register the case as such and declined to consider the prayer for police help for the purpose of facilitating the execution of the decree obtained in a partition suit.

2. The petitioner refers to a recent judgment of this Court reported at 2009 (1) WBLR (Cal) 826 where the longstanding practice as recognised in the previous judgments reported at [Gaya Nath Ghose Vs. Amulya Chandra Sarkar and Another](#), and [Panka Lal Bag Vs. Santosh Kumar Sikdar](#), was noticed. It was held in the said recent judgment that Rule 208 and Order 21 Rule 97 may appear to be similar, but Rule 208 has an independent area of operation. Indeed, the 1984 judgment had succinctly

spelt out the distinction that was first noticed in the 1957 report. It is also evident that for an application under Order 21 Rule 97 to be made there is some form of resistance which must be faced by the decree-holder. However, in invoking Rule 208 of the Civil Rules and Orders, it is sufficient that there is a reasonable apprehension on the part of the decree-holder that the attempt at execution would be resisted. Indeed, the later part of rule 208, which provides for payment of costs to the police, recognises there could be generic reasons for seeking and obtaining police assistance. It is possible that a particular area is disturbed or a class of persons would be likely to espouse the cause of judgment-debtor and resist the decree-holder's attempt at obtaining possession. Rule 208 covers several situations that could arise. As has been held in the 1957 judgment referred to above, the Court must proceed with utmost caution before allowing police help since a decree-holder obtaining police help would be able to dispossess lawful occupiers from the property and the fact such lawful occupiers have a right of repossession under Order 21 Rule 100 of the Code would be of little solace.

3. In the judgment referred to by the executing court in the order impugned, an opinion was rendered by a Single Judge of this Court that the exercise of authority under Rule 208 of the Civil Rules and Orders in the absence of the persons against whom the order is directed would amount to a breach of the principles of natural justice. Apart from the fact that the principles of natural justice would have limited operation in the case of a person who is in default and against whom execution proceedings have had to be levied for enforcing an order or decree, it appears that the judgment in the 2002 case did not notice the previous authoritative dicta in the 1957 and 1984 reports. To the extent that such judgment in the 2002 report is at variance with the opinion expressed in the 1957 and 1984 cases, such judgment cannot be regarded as good law.

4. The order impugned is set aside and the executing Court is requested to consider the decree-holder's application on merits.

5. Since the application was made by the decree-holder ex parte and no notice of the application has yet been issued and since there is no embargo on a Court passing an ex parte order under Rule 208 of the Civil Rules and Orders, the judgment-debtors have not been required to be served. Upon the petitioner herein bringing this order to the notice of the executing Court and upon the executing Court passing its first order on the matter thereafter, the petitioner herein will make available copies of the petition and this order to the judgment-debtors.

6. CO No. 1001 of 2012 is allowed as above without any order as to costs. Urgent certified photocopies of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.