

**HIGH COURT OF TRIPURA  
AGARTALA  
CRP NO.83 OF 2022**

**1. Sahajada Choudhury,**

W/o- late Abdul Kayam Choudhury,  
R/o- Baldakhal, P.O.- Paschim Champamura,  
P.S.- Bodhjungnagar, Sub-Division-Jirania,  
District- West Tripura, 799008.

**2. Abu Kalam Choudhury,**

S/o- Late Abdul Kayam Choudhury,  
R/o- Baldakhal, P.O.- Paschim Champamura,  
P.S.- Bodhjungnagar, Sub-Division- Jirania,  
District- West Tripura-799008.

**3. Abul Hussan Choudhury,**

S/o- late Abdul Kayam Choudhury  
R/o- Baldakhal, P.O.- Pashim Champamura,  
P.S.- Bodhjungnagar, Sub-Division- Jirania,  
District- West Tripura-799008.

**4. Abu Khayer Choudhury,**

S/o- Late Abdul Kayam Choudhury,  
R/o- Baldakhal, P.O.- Pashim Champamura,  
P.S.- Bodhjungnagar, Sub-Division-Jirania,  
District- West Tripura-799008.

**5. Sahim Choudhury,**

S/o- Late Abdul Kayam Choudhury,  
R/o- Baldakhal, P.O.- Pashim Champamura,  
P.S.- Bodhjungnagar, Sub-Division-Jirania,  
District- West Tripura-799008.

**6. Ayasha Choudhury,**

D/o- Late Abdul Kayam Choudhury,  
R/o- Baldakhal, P.O.- Pashim Champamura,  
P.S.- Bodhjungnagar, Sub-Division- Jirania,  
District- West Tripura, 799008.

(The petitioners were substituted **on the death of Original Decree Holder** Abdul Kayam Choudhury, S/o-late Afsar uddin@ Afsar Uddin Choudhury @ Afsar Uddin Sardar).

..... **Petitioner(s)**

Vs.

**1. Mamataj Begam,**

W/o- Late Ahidur Rahaman.

2. **Md. Azaher Uddin,**  
S/o- Late Ahidur Rahaman.

3. **Md. Alauddin,**  
S/o- Late Ahidur Rahaman.

4. **Ms. Tania Begam,**  
D/o- Late Ahidur Rahaman.

All are resident of Baldakhal, P.O.- Pashim Champamura, P.S.-  
Bodhjungnagar, Sub- Division- Jirania District- West Tripura-  
799008.

.....**Respondent(s)**

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For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.  
Mr. S. Bhattacharjee, Advocate.  
Mr. K. Nath, Advocate.

For the Respondent(s) : None.

Date of hearing : 11.10.2023

Date of delivery of  
Judgment & Order : 16.10.2023.

Whether fit for reporting : YES.

**HON'BLE MR JUSTICE T. AMARNATH GOUD**  
**JUDGMENT AND ORDER**

The present CRP was disposed of vide order dated 27.07.2023 and by application, review of the same is sought for in I.A. No.01 of 2023. By order dated 11.10.2023, this Court allowed the review and recalled the order. Now the CRP is reopened and is heard.

2. The petitioners before this Court are plaintiffs. The sole defendant expired *pendente lite*. The plaintiffs filed a suit

bearing registration No.T.S.90 of 2014 against the sole defendant (Ahidur Rahaman) for restoring the property which has been damaged by the defendant by digging sand(excavation) from the open land and by changing the nature of the property. The plaintiffs also sought claim for such damages.

3. The suit schedule property belonging to the plaintiffs which is said to have been damaged by the defendant is as under:-

SCHEDULE OF THE SUIT LAND

*Within the District-East Tripura, Pargana-Agartala earlier within P.S.- East Agartala at present within P.S. Bodhjunnagar, Sub-Division-Jirania, earlier Sub-Division-Sadar, Revenue Circle-Jirania, recorded under Mouja & Tehasil Cachery-Uttar Champamura, recorded in khatian No.281/1, R.S. Plot No.108 for an area measuring 0.08 acres nature of land Bastu, Part of Rs. Plot No.106 recorded in khatian No.281/2 for and area measuring 0.03 acre out of 0.06 acres of pukur par and part of R.S. Plot No.114 for an area measuring 0.03 acres out of 0.10 acres of bastu recorded in khatian No.281/2, totaling 0.14 acres of land which is butted and bounded by*

*North by:- Plaintiff and his brother*

*South by:- Baldakhal-Matabari Road.*

*East by:- Nur Mahammad and others(heirs of Rahim-chand bibi.*

*West by:- R.S. Plot No.107 & 106 recorded in khatian No.281/2 of the same mouja*

*Within the schedule total 0.14 acres of land."*

4. The Court below has decreed the suit by Judgment and decree dated 27.09.2014. The decree is as under:-

ORDER

*In the result, it is hereby ordered that the suit of the plaintiff is decreed on contest without cost. It is hereby directed to the defendant that he shall raise and re-fill the suit land in it is original position and also to construct the bank(par) of the tank(pukur).*

*Defendant is also directed to pay an amount of Rs.10,38,300/- as damages in favour of the plaintiff for loss of construction on the suit land. The defendant is to abide by the direction of this order and to comply the order within two months from the date of passing this order/judgment and if the defendant falls the plaintiff will have the liberty to knock the door of the appropriate court for seeking redressal.*

*With the aforesaid observation, the present suit is decreed on contest without cost.*

*Draw the decree.*

*Make necessary entry in the concerned TR."*

5. The decree-holder filed an execution proceeding under Order XXI Rule-11 of the CPC bearing registration No. Ex(T)-07 of 2018 seeking attachment of the property of the defendants. The schedule of the property seeking attachment of the execution proceeding is as under:-

**" SCHEDULE OF THE PROPERTY**

*With the District West Tripura, Sub-Division, Jirania Revenue Circle-Jirania, P.S. Bodhjungnagar, Mouja & Tehasil Kachari-Uttar Champamura, recorded in Touji No.24(P), Khatian No.1239, Sabek Plot No.PB-10,174, Hal Plot No.331, for land area measuring 0.32 acres of nul land, butted and bounded by-*

*North-Road(Baldakhal-Matarbari Road)*

*South Sahinchowdhury and another*

*East- Sahajada Begam Chowdhury*

*West- Rafique Miah*

*Within this boundary for land area measuring 0.32 acres of classified as nul."*

6. Initially, after complying with the formalities of serving summons and hearing, the Court below passed an interim order of attachment on 06.10.2018. The same is extracted here-under:-

**" Case No.T(EX)07 of 2018**

*06.10.2018.*

*Today was fixed for order.*

*Ld. Counsel L.R. Khadim is present on behalf of Decree Holder.*

*I have heard him at length.*

*No step is filed by the Judgment Debtor side.*

*This is a petition for execution of the Decree dated 23.09.2016 passed by this Court in TS 90 of 2014 where by this Court was placed to direct the present Judgment Debtor to pay an amount of Rs.10,38,3000/- to the present Decree Holder as damages.*

*Ld. Counsel for the Decree Holder seeks realization of the said amount through attachment and sale of the property of the Judgment Debtor described in the execution petition in schedule.*

*Ld. Counsel for the Decree Holder also fairly submits that the property described in the schedule to the petition is wholly owned by the Judgment Debtor.*

*Notice was duly served to the Judgment Debtor but he did not enter appearance, hence, I am inclined to order as follows:*

*1. Issue Warrant of Attachment of the property of the Judgment Debtor namely Ahidur Rahaman described in the schedule to the execution petition if requisites are submitted.*

*Fix 23.11.2018 for execution report regarding*

*attachment."*

7. The third parties to the suit filed an application under Order XXI Rule 58 of CPC before the Execution Court and apart from the other points contended that notices were not served and they are affected parties and have rights, title and interest upon the property under attachment. To this effect, submissions were also made before the Court indicating that the original owners of the property under attachment is Rahij Uddin and four other his legal heirs namely, (1) Sahidur Rahaman, (2) Rafik Uddin, both son of It. Rahij Uddin (3) Smti. Surjahan Begam, W/o late Ulfath Ali, (4) Smti. Manora Begam and (5) Smti. Nurjahan Begam (expired without leaving any legal heirs behind her).

8. It is seen that according to the third parties before the Court below, the Judgment-debtor-Ahidur Rahaman deceased *pendente lite* is not the owner. But it is seen from the cause title that he is son of original owner i.e., late Rahij Uddin.

9. The Court below after hearing both sides has passed an order dated 24.06.2022 lifting the attachment which was passed earlier and further directed the matter to be listed on 30<sup>th</sup> August 2022 to proceed with the matter. The same is extracted here-under:-

**"Case No. Civil Misc(J) 40 of 2022**

24-06-2022

*Ld. Advocate Mr. L.R. Khadim is present on behalf of the PlaintiffDH who has submitted list of documents in Firsti after serving copies to the DefendantJD i.e. the Petitioner of Civil Misc (J) 40 of 2022.*

*Ld. Advocate Mr. B.S. Bhowmik files memo of appearance for the DefendantJD(Petitioner).*

*Heard both sides.*

*I have examined the application filed by the Petitioner side (DefendantJD) under Order XXI Rule 58(2) of CPC for taking into consideration the name of all the legal heirs of Rahij Uddin, the original owner of the suit land as described in the plaint and scrutinized the WO filed by the Plaintiff-DH.*

*The main thrust of the arguments led by the Sr. Advocate Mr. S. Chakraborty to bring the name of all the legal heirs on record of Lt. Rahij Uddin whose names are intentionally omitted and (1) Sahidur Rahaman(2) Rafik Uddin (3) Surjahan Begam (4) Manora Begam and Nurjahan Begam(dead) has to brought on record along with the other legal heirs of Lt. Ahidur Rahaman S/O Lt. Rahij Uddin since the above named legal heirs are also the owners of the schedule of the suit land.*

*Ld. Advocate for the Plaintiff-DH did not raise any counter facts denying the status of the legal heirs. Rather, the Ld. Advocate for the Plaintiff-DH asserts the fact that the deceased Ahidur Rahaman was not suffering from any illness and attended the office regularly and disputed the illness of the deceased Ahidur Rahaman in response to the plea of illness taken by the Defendant-JD(Petitioners) in Para3 of the petition. The pivotal question remains that whether the property which is attached on 04-01-2019 in terms of the Judgment and Order of decree dated, 23-09-2016 can be further executed when the other legal heirs raising their objection regarding the ownership/claim of the schedule of the suit land. A perusal of order XXI Rule 58(2) of CPC discloses as that all questions including those right, title and interest in the attached property are required to be decided by the same Court and not by a separate suit. Since the objectors/claimants who are actually brought on record in terms of order dated, 1112 2020 on a petition moved by the Ld. Advocate for the Plaintiff-DH are stating themselves there are other legal heirs, it is thus lawful to hear the other persons namely,(1) Sahidur Rahaman(2) Rafik Uddin (3) Surjahan Begam (4) Manora Begam since the said persons may also have right, title and interest of the suit land which has been attached in view of the done in respect of the claim made by the Claimant / Objector and the persons namely,(1) Sahidur Rahaman(2) Rafik Uddin (3) Surjahan Begam (4) Manura Begam to be brought on record. The Defendant-JD and other legal heirs as named may file appropriate petition, if any, regarding their claim and it would be a continuation of the proceedings under Order XXI Rule 58(2) of CPC. The petition under Order XXI Rule 58(2) of CPC is allowed. The Defendant-JD(Petitioners) to take necessary step in the spirit of this order. Fix 30082022 for Hearing/ Step by the Defendant-JD(Petitioners) / Step by the Plaintiff-DH.order dated, 06-10-2018. The claim or objection for determination of the right title and interest, if any has to be properly adjudicated by fair investigation.*

*Considering the fact and adjudication has to be done in respect of the claim made by the Claimant / bjector and the persons namely,(1) Sahidur Rahaman(2) Rafik Uddin (3) Surjahan Begam (4) Manura Begam to be brought on record.*

*The Defendant-JD and other legal heirs as named may file appropriate petition, if any, regarding their claim and it would be a continuation of the proceedings under Order XXI Rule 58(2) of CPC. The petition under Order XXI Rule 58(2) of CPC is allowed.*

*The Defendant-JD(Petitioners) to take necessary step in the spirit of this order.*

*Fix 30-08-2022 for Hearing/ Step by the Defendant-JD(Petitioners) / Step by the Plaintiff-DH."*

10. Aggrieved by the said order of lifting the attachment, the present CRP is filed by the Decree holder seeking the following reliefs:-

*" i) Admit the instant petition.*

*ii) Call for records.*

*iii) Issue Rule upon the Respondents & thereafter.*

*iv) Hear the instant petition and after hearing allow the instant petition preferred by the petitioner by quashing & cancelling the impugned Orders, dated, 24.06.2022 passed in Civil. Misc.(J)-40 of 2022 & Civil Misc.(J)-39 of 2022 & Order, dated 24.06.2022, passed in Ex(T)-07 of 2018.*

*v) Be pleased to Pass an interim stay order, staying the operation of the impugned Orders, dated 24.06.2022 passed in Civil Misc(J)-40 of 2022 & Civil Misc(J)39 of 2022 & Order dated 24.06.2022, passed in Ex(T) of 2018, till disposal of the instant petition.*

*vi) Pas any other or further order or orders as the Hon'ble High Court may deem fit and proper in this regard for fair ends of justice."*

11. Here it is pertinent to mention earlier vide order dated 27.07.2023, the present CRP was disposed of in the following terms:-

*"In view of above, the entire execution proceedings before the Court below are set aside. The petitioners, the decree holders are at liberty to initiate fresh execution proceeding. This Court finds that neither in the pleadings of the execution proceeding nor in the order passed in the execution proceeding, which is impugned with regard to the suit schedule property and the subject matter, the property which is under attachment in the execution proceeding are separate and no proper reasoning is given in this regard, either in E.P. papers nor in the order. In view of the same, the proceedings under execution proceeding are set aside, both the parties are at liberty to avail remedies in accordance with law. The matter is remand back to the learned Court below for fresh adjudication."*

12. However in terms of the order passed in Rev. Pet No.50 of 2023, this present CRP is again re-opened for hearing and proper adjudication.

13. Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner(s)/decree holder submits that the Court below having satisfied has ordered the execution petition in the form of attaching the property and without any proper reasons, the order of attachment has been lifted and thus prayed to continue the order of attachment.

14. Heard and perused the evidence on record.

15. Admittedly, the suit is decreed and the decree holder has filed the execution petition, in respect of the third party property and sought an attachment of the said property. The learned Sr. counsel has not drawn the attention of this Court to any such record to show that the Judgment debtor is the absolute owner of the property under execution and there are no other claimants.

16. Initially, the Court below by order dated 06.10.2018 has passed an order of attachment. However, after hearing the third parties the said order of attachment has been lifted in all fairness to appreciate their rights, title, and interest and to follow the doctrine of principles of natural justice.

17. In this regard, it becomes necessary to examine the Order XXI Rule 58 of CPC and other relevant rules that protect the interest of the third parties.



Accordingly Order XXI Rule 58 and Rule 97 to 103 of CPC hereby are extracted herein-under:-.

**"Order XXI Rule 58:-** Adjudication of claims to, or objections to attachment of, property.

**(1)** Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained:

**Provided** that no such claim or objection shall be entertained-

**(a)** where, before the claim is preferred or objection is made, the property attached has already been sold; or **(b)** where the Court considers that the claim or objection was designedly or unnecessarily delayed.

**(2)** All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

**(3)** Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination:-

**(a)** allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit; or

**(b)** disallow the claim or objection; or

**(c)** continue the attachment subject to any mortgage, charge or other interest in favour of any person; or

**(d)** pass such order as in the circumstances of the case it deems fit.

**(4)** Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

**(5)** Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute; but, subject to the result of such suit, if any, an order so refusing to entertain the claims or objection shall be conclusive.

**Order XXI Rule 97:- Resistance or obstruction to possession of immovable property.**

(1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

**Order XXI Rule 98:- Orders after adjudication.**

(1) Upon the determination of the questions referred to in [rule 101](#), the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

**Order XXI Rule 99 Dispossession by decree-holder or purchaser.**

(1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

**Order XXI Rule 100. Order to be passed upon application complaining of dispossession.**

Upon the determination of the questions referred to in [rule 101](#), the Court shall, in accordance with such determination,-

**(a)** make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

**(b)** pass such other order as, in the circumstances of the case, it may deem fit.

**Order XXI Rule 101 Question to be determined.**

All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under [rule 97](#) or [rule 99](#) or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.

**Order XXI Rule 102 Rules not applicable to transferee pendent lite.**

Nothing in [rules 98 and 100](#) shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit in which the decree was passed or to the dispossession of any such person.

**Order XXI Rule 103:- Orders to be treated as decrees.**

Where any application has been adjudicated upon under [rule 98](#) or [rule 100](#) the order made thereon shall have the same force and be subject to the same conditions as to an appeal or otherwise as if it were a decree.

18. In the light of the submission made on behalf of the third party claimants that they are the legal heirs of the original owners Rahij uddin, there cannot be any order against their property as the original owner late Rahij uddin and also they are not party to the suit and further the defendant/Judgment debtor is not the sole owner of the said property.

19. With regard to deciding the third party claim who is not party to the suit, their rights, title, and interest need to be examined by giving them a fair opportunity, otherwise, it will

amount to a violation of principles of natural justice and also would effect their Rights to Property as construed under Article 300A of the Constitution of India.

20. The Hon'ble Supreme Court in Para No.5 of its Judgment reported in **AIR 1997 SC 856** titled as **Bhramdeo Chaudhary v. Rishikesh Prasad Jaiswal and another** read as under:-

"5. In short the aforesaid statutory provisions of Order XXI lay down a complete code for resolving all disputes pertaining to execution of decree for possession obtained by a decree-holder and whose attempts at executing the said decree meet with rough weather. Once resistance is offered by a purported stranger to the decree and which comes to be noted by the Executing Court as well as by the decree-holder the remedy available to the decree-holder against such an obstructionist is only under Order XXI Rule 97 sub-rule (1) and he cannot bypass such obstruction and insist on re-issuance of warrant for possession under Order XXI Rule 35 with the help of police force, as that course would amount to by-passing and circumventing the procedure laid down under Order XXI Rule 97 in connection with removal of obstruction of purported strangers to the decree. Once such an obstruction is on the record of the Executing Court it is difficult to appreciate how the Executing Court can tell such obstructionist that he must first lose possession and then only his remedy is to move an application under Order XXI Rule 99, CPC and pray for restoration of possession. The High Court by the impugned order and judgment has taken the view that the only remedy available to a stranger to the decree who claims any independent right, title or interest in the decretal property is to go by Order XXI Rule 99. This view of the High Court on the aforesaid statutory scheme is clearly unsustainable. It is easy to visualise that a stranger to the decree who claims an independent right, title and interest in the decretal property can offer his resistance before getting actually dispossessed. He can equally agitate his grievance and claim for adjudication of his independent right, title and interest in the decretal property even after losing possession as per Order XXI, Rule 99. Order XXI, Rule 97 deals with a stage which is prior to the actual execution of the decree for possession wherein the grievance of the obstructionist can be adjudicated upon before actual delivery of possession to the decree-holder. While Order XXI, Rule 99 on the other hand deals with the subsequent stage in the execution proceedings where a stranger claiming any right, title and interest in the decretal property might have got actually dispossessed and claims restoration of possession on adjudication of his independent right, title and interest de hors the interest of the judgment-debtor. Both these types of enquiries in connection with the right, title and interest of a stranger to the decree are clearly contemplated by the aforesaid scheme of Order XXI and it is not as if that such a stranger to the decree can come in the picture only at the final stage after losing the possession and not before it if he is vigilant enough to raise his objection and obstruction before the warrant for possession gets actually executed against him. With

*respect the High Court has totally ignored the scheme of Order XXI, Rule 97 in this connection by taking the view that only remedy of such stranger to the decree lies under Order XXI, Rule 99 and he has no locus standi to get adjudication of his claim prior to the actual delivery of possession to the decree-holder in the execution proceedings. The view taken by the High Court in this connection also results in patent breach of principles of natural justice as the obstructionist, who alleges to have any independent right, title and interest in the decretal property and who is admittedly not a party to the decree even though making a grievance right in time before the warrant for execution is actually executed, would be told off the gates and his grievance would not be considered or heard or merits and he would be thrown off lock, stock and barrel by use of police force by the decree-holder. That would obviously result in irreparable injury to such obstructionist whose grievance would go overboard without being considered on merits and such obstructionist would be condemned totally unheard. Such an order of the Executing Court, therefore, would fail also on the ground of non-compliance with basic principles of natural justice. On the contrary the statutory scheme envisaged by Order XXI, Rule 97, CPC as discussed earlier clearly guards against such a pitfall and provides a statutory remedy both to the decree- holder as well as to the obstructionist to have their respective say in the matter and to get proper adjudication before the Executing Court and it is that adjudication which subject to the hierarchy of appeals would remain binding between the parties to such proceedings and separate suit would be barred with a view to seeing that multiplicity of proceedings and parallel proceedings are avoided and the gamut laid down by Order XXI Rules 97 and 103 would remain a complete code and the sole remedy for the concerned parties to have their grievances once and for all finally resolved in execution proceedings themselves."*

21. In view of the above, since the matter requires adjudication under Order XXI Rule 58, 97 to 100 of CPC, if an application is made by the stranger, without filing a fresh suit for declaration of right, title and interest, and if the Court decide the same, it will amount to passing of a decree. Since the third parties are not before this Court and since the matter is pending before the Trial Court, it is not for this Court to go and decide upon the other aspects and thus confines the case only to the extent of issues involved in the CRP i.e., with regard to the lifting of the attachment.

22. During the course of the argument, Mr. Roy Barman, learned Sr. counsel upon instruction submitted that after lifting the

attachment, the case was scheduled to be listed before the Court below on 30<sup>th</sup> of August 2022, but, for the pendency of the present CRP in the High Court, the same is pending on the file of the Trial Court. Since the major issue of deciding the right, title, and interest is pending before the Court below, passing an order of attachment or lifting the attachment in no way would prejudice the rights of the decree-holder. At times, deciding a matter purely on technicalities to say that the pleading do not disclose any reasons cannot be a ground to deprive the legitimate right of a citizen when the citizen is before the Court of law for his rights. His rights are to be protected under Constitution of India and the same needs to be given high pedestal in order to meet the ends of justice.

23. For the reasons stated above, this Court feels that it would be just and proper if the interests of the third parties are also decided in respect of the property under execution is concerned. Accordingly, there shall be a direction to the Court below to give an opportunity to the third parties to the suit and if any application are filed, the same be decided as per procedure by giving an opportunity to all concerned.

24. Accordingly, the order passed in the present CRP is taken on record, and with the above observation, the instant CRP stands dismissed.

25. As a sequel, stay if any stands vacated. Pending application(s), if any also stands.

**JUDGE**

suhanjit

