
(2023) 12 OHC CK 0150
In the Orissa High Court
Case No : CMP No. 1584 Of 2023

Alekha Samantaray

APPELLANT

Vs

Narayan Lenka And Others

RESPONDENT

Date of Decision : 22-12-2023

Acts Referred:

Code of Civil Procedure, 1908 — Order 41 Rule 5

Citation : (2023) 12 OHC CK 0150

Hon'ble Judges : K.R. Mohapatra, J

Bench : Single Bench

Advocate : D. Pani

Final Decision : Dismissed

Judgement

K.R. Mohapatra, J

1. This matter is taken up through hybrid mode.
2. Order dated 30th November, 2023 (Annexure-7) passed by learned Additional District Judge, Kujang in R.F.A. No.46 of 2019 is under challenge in this CMP, whereby an application filed by the Appellant-Petitioner No.1 for stay of the judgment dated 8th May, 2019 passed by learned Senior Civil Judge, Kujang in C.S. No.21 of 2012, has been rejected.
3. Mr. Pani, learned counsel for the Petitioner submits that the suit was filed by the Opposite Party No.1 for declaration of right, title and interest. The suit was decreed against the present Petitioner vide judgment dated 8th May, 2019 with the following order:

"The suit of the plaintiff be and same is decreed on contest against the defendants but without any cost.

The plaintiff has right, title, interest and possession over the suit land is hereby declared in his favour, if the plaintiff so desired can take steps for correction of Consolidation ROR."

4. Being aggrieved, the Defendant-Petitioner filed R.F.A. No.46 of 2019, which is pending in the Court of learned Additional District Judge, Kujang. Admittedly, the Petitioner initially did not file any application for stay of the judgment passed in C.S. No.21 of 2012. But, during pendency of the appeal, the land was acquired by the State Government in the year, 2023. Apprehending that the Plaintiff-Opposite Party may receive the compensation for acquisition of land, the Petitioner filed an application under Order XLI Rule 5 CPC with a prayer to stay judgment dated 8th May, 2019 passed by learned Senior Civil Judge, Kujang in C.S. No.21 of 2012. The said application was erroneously rejected on the ground that it was not filed without unreasonable delay and that the Appellant will not suffer substantial loss, if the stay is not granted.

5. It is his submission that although there is a delay in filing the petition for stay, but that has been explained in the petition for stay. The cause of action for filing of the stay application arose after the land was acquired by the State Government. Thus, learned appellate Court was not correct in observing that the petition for stay was not filed without unreasonable delay. Further the Petitioner will suffer irreparable loss if the compensation money for acquisition of the suit property released in favour of the Opposite Party. These aspects were neither discussed nor taken into consideration by learned appellate Court while passing the impugned order. Hence, the impugned order under Annexure-7 should be set aside and this Court may direct stay of judgment in C.S. No.21 of 2012 till disposal of the appeal.

6. Considering the submission made by learned counsel for the Petitioner and on perusal of the record, it appears that the suit was decreed against the Petitioner declaring the right, title and interest of the Plaintiff-Opposite Party over the suit land. The Plaintiff was also given liberty to take steps for correction of the Consolidation ROR. Mr. Pani, learned counsel for the Petitioner submits that the Consolidation ROR has not yet been corrected. Acquisition of the suit property is a subsequent event after filing of the first appeal. The same was not the subject matter of dispute in the suit or in the appeal. The decree being a declaratory one, stay of the same does not arise. If the Petitioner is aggrieved by release of compensation amount for acquisition of the suit property, he has a remedy under different statute and definitely not by filing an application for stay of the judgment passed in C.S. No.21 of 2012. Admittedly, the petition was filed after a lapse of four years from the date of filing of the RFA.

7. In view of the above, this Court is of the considered opinion that learned appellate Court has committed any error in not entertaining the petition for stay of the judgment passed in C.S. No.21 of 2012.

8. Accordingly, the CMP being devoid of any merit stands dismissed.

Urgent certified copy of this order be granted on proper application.

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