
(2016) 05 JH CK 0084
In the Jharkhand High Court
Case No : S.A. No. 137 of 2012

Archana Ghosh

APPELLANT

Vs

Aparna Ghosh

RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Citation : (2016) 166 AIC 506 : (2016) 4 AIRJharR 307 : (2016) 3 JCR 460

Hon'ble Judges : Amitav K. Gupta, J.

Bench : Single Bench

Advocate : Mr. Indrajit Sinha, Advocate, for the Appellant; Mr. C. Pal and Mr. S.K. Deo, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Amitav K. Gupta, J.—I.A. No. 2862 of 2016

This Interlocutory Application has been filed for grant of interim stay of the further proceeding in Execution Case No. 13 of 2011, pending in the court of learned Civil Judge (Junior Division) Vth, Jamshedpur.

2. Mr. Indrajit Sinha, learned counsel appearing for the appellants, has submitted that in S.A. No. 137 of 2012, substantial questions of law were framed by order dated 08.11.2012 while admitting the appeal for hearing, interim stay was granted till the next date, as per Annexure-IA/1. That during the pendency of the present appeal the decree holders had filed an Execution Case being No. 13 of 2011, in the court of learned Civil Judge (Junior Division) Vth, Jamshedpur.

It is submitted that in S.A. No. 137/12, the appellants had filed an interlocutory application being I.A. No. 3368/2012 for interim stay of the proceedings in Execution Case No. 13 of 2011. The said I.A. was disposed of by order dated 28.01.2013, whereby the interim order granted vide order dated 08.11.2012 was extended till further orders, as per Annexure-IA/2. Thereafter, respondents/O.Ps had filed an interlocutory applications being I.A. No. 4489/14 for fixing an early date of hearing and I.A. No. 4486 of 2014 for vacating the interim order of stay

and both the I.As were disposed of by order dated 11.3.2015 whereby the date of hearing was fixed on 25.03.2015 and I.A. No. 4486/14, for vacating the stay, was disposed of as not pressed since the date of hearing had been fixed (Annexure-IA/3). Thereafter the second appeal was listed for hearing on 17.09.2015 but the appellants had not appeared on the said date and the Court on submission of the respondents, listed the matter for hearing on 13.10.2015 with an observation that if nobody would appear to argue the matter on behalf of the appellants, the stay so granted vide order dated 8.11.2012 shall be automatically vacated (Annexure-IA/4).

It is argued that on the next date i.e. on 13.10.2015 the appeal was listed for hearing and the counsel for both the parties had appeared and on the prayer of the parties the Court had fixed the next date on 4.11.2015. It is argued that no order for vacating the stay was passed but the respondents filed a petition before the Executing Court annexing the order dated 17.09.2015 stating that the stay had been vacated, hence there was no impediment for issuing the writ of delivery of possession in favour of decree holder (Annexure-IA/5).

That on getting knowledge about the statement made by the respondents, the appellants filed an application in the office of the High Court seeking information with a query "whether there is any operative interim order of stay in the second appeal no. 137/12" for verifying the averments made by the respondents/decreed holder. That the office had provided information by order dated 31.3.2016 (Annexure-1A/6) that the stay granted by order dated 08.11.2012 is still continuing. That after obtaining the information, the appellants filed the rejoinder in the Executing Court, stating therein that the stay granted by the Court by order dated 8.11.2012 had never been vacated and the same is still continuing as per Annexure-IA/7. It is argued that the learned Civil Judge (Junior Division) Vth, Jamshedpur, in Execution Case No. 13/2011 vide order dated 29.4.2016 allowed the application of the decree holder and directed the issuance for writ of delivery of possession (Annexure-IA/8), in a mechanical manner without application of judicial mind and without considering and appreciating the information dated 31.3.2016, provided by the office of the Hon"ble Jharkhand High Court, Ranchi.

It is submitted that if I.A. No. 2862/16 is not allowed the appellants shall suffer irreparable loss and injury and the appellants are willing and ready to argue the appeal on the date fixed by the Court.

3. Per-contra, learned counsel for the respondents has submitted that the appellants have been adopting dilatory tactic and lingering the hearing of the appeal as would be evident from the order-sheets dated 10.5.2013 to 14.11.2015 in the S.A. No. 137 of 2012. It is contended that the decree holder had rightly prayed for issuance of writ of delivery of possession as it would be evident from the order dated 17.11.2015 that the Court had categorically stated that if none will appear to argue the matter on behalf of the appellants, the stay granted vide order dated 8.11.2012 shall stand automatically vacated. Learned

counsel for the respondents has emphasised that the word "shall" used was mandatory and since the appellant did not argue the case the stay stood vacated automatically on the next date. Lastly it is urged that if the stay is allowed to continue then an early date of hearing be fixed as there is concurrent findings of the trial court and the lower appellate court and the decree holder is being deprived of his substantive right in enjoying the usufruct of the decree.

4. Having heard the counsels and on perusal of the record, it transpires that by order dated 8.11.2012 appeal was admitted for hearing on the substantial questions of law formulated by the Court and interim order of stay in second appeal no. 137/12 granted till 14.01.2013. By order dated 28.01.2013 the interim stay granted by order dated 08.11.2012 was extended till further orders. Interlocutory applications filed by the decree holder for vacating the stay was disposed of, as not pressed as the prayer of the respondent for fixing early date of hearing was allowed. On 17.11.2015 the appellants had not appeared to argue the case and the Court was pleased to observe that if none appears on the next date the stay granted shall stand vacated automatically and the appeal was ordered to be listed for hearing on 13.10.2015. It is evident that on the prayer of the parties the appeal was posted on 4.11.2015. Again on 4.11.2015 on the prayer of the parties, the Court had directed for listing the case in the last week of January, 2016.

It is amply clear that no order has been passed by the Court whereby the order dated 8.11.2012 was vacated rather by order dated 17.11.2015 it was made clear that if the appellants do not appear to argue the case on the next date the stay shall stand vacated automatically. The appellant had filed the information dated 31.3.2016, provided by the office of the High Court with the rejoinder in the execution case in the court below. In the information provided by the High Court, it was mentioned that the stay is still continuing which is substantiated by the order-sheets as no order for vacating the stay was passed by this Court.

It is evident that the impugned order for writ of delivery has been passed in Execution Case No.13 of 2011, by the learned Civil Judge (Junior Division) Vth, Jamshedpur in a mechanical manner without considering the statement and documents filed by the appellants, accordingly the operation of the impugned order dated 29.4.2016 for writ of delivery is stayed and shall be kept in abeyance till the next date.

With the said observation and direction I.A. No. 2862/16 is hereby disposed of.

S.A. No. 137 of 2012

5. On prayer of the counsels, put up this case on 13.6.2016 at 3.00 P.M under the heading for "Hearing".

6. It is made clear that no further adjournment shall be granted to either parties on next date.

7. Let the order be sent forthwith to the court below through "FAX".