

(2019) 04 OHC CK 0002
In the Orissa High Court
Case No : C.M.P. No.331 of 2019

Dhoba Moharana

APPELLANT

Vs

Smt. Lili Moharana And Others

RESPONDENT

Date of Decision : 10-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 227

Code Of Civil Procedure, 1908 — Order 6 Rule 4, Order 21 Rule 26, Order 21 Rule 29

Citation : (2019) 04 OHC CK 0002

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : Subrat Panda

Final Decision : Dismissed

Judgement

Dr. A.K.Rath, J

1. This petition challenges the order dated 08.03.2019, passed by the learned Civil Judge (Senior Division), Dhenkanal, in Execution Case No.38 of

2006, whereby and whereunder, learned executing court rejected the application of the J.Dr. no.1-petitioner under Order 21 Rule 29 CPC to stay the

further proceeding in execution case till disposal of C.S. No.54 of 2019.

2. Since the dispute lies in a very narrow compass, facts need not be recounted in details. Suffice it to say that plaintiffs- pposite party nos.1 to 4

instituted C.S. No.122 of 2004 before the learned Civil Judge (Senior Division), Dhenkanal, for declaration of right, title and interest over the suit

property, confirmation of possession and recovery possession. Petitioner was defendant no.1 in the suit. The suit was decreed ex parte against

defendant no.1 to 7 and 9 to 12. Thereafter, they levied Execution Case No.38 of 2006. While matter stood thus, J.Dr. No.1-petitioner as plaintiff

instituted C.S. No.54 of 2019 in the same court for declaration of title, declaration that judgment and decree passed in C.S. No.122 of 2004, Execution Case No.38 of 2006 and RSD No.4111 of 1948 and 290 of 1953 as null and void, confirmation of possession and permanent injunction. He filed an

application under Order 21 Rule 29 CPC to stay Execution Case No.38 of 2006 till disposal of the suit. Learned executing court dismissed the same.

3. Mr. Subrat Panda, learned counsel for the petitioner submits that the D.Hr. by playing fraud on court obtained the decree. The decree is not

executable. In the meantime, J.Dr. no.1-petitioner has instituted C.S. No.54 of 2019. In view of the same, further proceeding in execution case be

stayed till disposal of the suit.

4. An identical question came up before this Court in CMP No.294 of 2019, disposed of on 27.3.2019. This Court held :

“4. Before adverting into the contentions raised by the learned counsel for the petitioner, it will be necessary to set out Rules 26 & 29 of Order 21 CPC.

“26. When Court may stay execution.-(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of

such decree for a reasonable time, to enable the Judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction

in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made

by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) & (3) xxx xxx”

xxx”

“29. Stay of execution pending suit between decree-holder and judgment-debtor-Where a suit is pending in any Court against the holder of a decree of such Court

[or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or

otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

xxx xxx xxx

5. The words "upon sufficient cause being shown" appearing in Order 26 is material. Merely because another suit has been filed, the same is not

per se a ground to stay the execution case. The D.Hr. cannot be deprived of the fruits of litigation.

6. In *Judhistir Jena Vrs. Surendra Mohanty and another*, AIR 1969 Ori. 233, this Court held :-

"xxx xxx xxx"

The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons.

Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the decree might succeed. Such

suits are also of a very precarious nature. The allegations therein ordinarily would be that the previous decree was obtained by fraud or collusion or that the decree

was not binding on the present plaintiff as the transaction entered into by the judgment-debtor was tainted with immorality. These are all suits of un-certain and

speculative character. Most of these cases are likely to fail the onus being very heavy on the plaintiff to establish fraud and similar charges. That being the position,

a person should not be deprived of the fruits of his decree merely because suits of frivolous character are instituted and litigants are out after further series of

litigations. The decree must be allowed to be executed and unless an extraordinary case is made out, no stay should be granted. Even if stay is granted, it must be on

suitable terms so that the earlier decree is not stifled.

No hard and fast rule can be laid down in what cases stay would be granted or refused. But as has already been stated, a rigorous test is to be applied and in most of

the cases prayer for stay is bound to be refused.

xxx xxx xxx"

5. On the anvil of decisions cited supra, the instant case may be examined. Plaintiffs-opposite party nos.1 to 4 instituted C.S. No.122 of 2004 seeking

the relief mentioned supra. The suit was decreed. Petitioner was defendant no.1 in the suit. He had chosen not to contest the suit. He rose from deep slumber and filed C.S. No.54 of 2019 after lapse of fourteen years of passing of the judgment. The detail particulars of fraud have not been stated in the plaint. Mere allegation of fraud is not suffice.

6. Order VI Rule 4 CPC provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. On a bare perusal of the plaint, it is evident that detail particulars of fraud have been mentioned. The suit has been instituted to deprive the plaintiff from enjoying fruits of decree. The petition under Order 21 Rule 29 CPC cannot come to the rescue of the J.Dr. no.1-petitioner, unless sufficient cause is shown to stay the execution case. No sufficient case has been shown. The suit is a ruse.

7. In the wake of the aforesaid, the petition sans merit, deserves dismissal. Accordingly, the same is dismissed .There shall no order as to cost.

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