

(2023) 02 OHC CK 0107
In the Orissa High Court
Case No : CMP No. 151 Of 2023

Kabita Samal

APPELLANT

Vs

D.Vizialaxmi

RESPONDENT

Date of Decision : 15-02-2023

Acts Referred:

Code of Civil Procedure, 1908 — Section 47

Citation : (2023) 02 OHC CK 0107

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

Bench : Single Bench

Advocate : Goutam Mukherji, Soumya Dev Ray

Final Decision : Disposed Of

Judgement

K.R. Mohapatra, J

1. This matter is taken up through Hybrid mode.
2. Order dated 7th February, 2022 (Annexure-1) passed by learned Civil Judge (Senior Division), Koraput in Execution Petition No.5 of 2013 is under challenge in this CMP, whereby entertaining an application filed by the Opposite Party / Dhr. the executing Court directed as under:
".....On filing of the requisites, a fresh execution warrant be issued by this court directing the bailiff to execute the warrant even if in absence of Jdr or any person claiming through Jdr even if the premises is locked and give delivery of possession to the Dhr by breaking upon the door of the house or removing any construction made on the identified suit land even in the absence of Jdr at the cost of the Dhr and report compliance to the court. Put up on 10.02.2023 for filing requisites by Dhr."
3. Mr. Mukherji, learned Senior Advocate raises two grounds for challenging the said order. Firstly, an application under Section 47 CPC in CMA No.34 of 2022 is pending in the said Execution Case. Secondly, the Petitioner was not given an

opportunity to defend his case to the petition filed by the DHr./Opposite Party to give delivery of possession by breaking upon the lock.

4. On consideration of the submission made by learned counsel for the Petitioner, this Court finds the CMP has to be kept pending to examine the question raised by learned Senior Advocate. Hence, in order to save judicial time and to avoid delay in disposal of the execution case, this Court disposes of the CMP with a direction that in the event the Petitioner files a petition to recall the order dated 7th February, 2023 passed in Execution Petition No.5 of 2013, learned Civil Judge (Senior Division), Koraput shall do well to consider the same giving opportunity of hearing to the parties concerned in the Execution Case.

4.1 It is made clear that this Court has not expressed any opinion on the merit of the submission made by Mr. Mukherji, learned Advocate appearing on behalf of the Petitioner.

Issue urgent certified copy of the order on proper application.

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