
(2008) 09 JH CK 0006
In the Jharkhand High Court

Shashank Shekhar Singh and Another	APPELLANT
Vs	
Phulpoti Devi	RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Citation : (2009) 1 JCR 221

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—IA No. 2406 of 2008 has been filed by the appellants praying for Initiation of a contempt proceeding against the

respondent for alleged violation of the order of this Court passed on 29.2.2008.

2. Learned Counsel would explain that by the aforesaid order, the proceedings in the execution case No. 1 of 2007 pending before the Munsif,

Seraikela Khar-sawan was stayed. Though such stay was allowed till the appearance of the respondent, but the order of stay was not vacated.

3. In fact, the respondent had filed a petition after her appearance in the case through her lawyer for vacating the stay, but for the reasons known

to her, the petition was not pressed and no order was passed and therefore the order of stay having not been vacated, it is deemed that the same

continues. Yet, by making wrong representation before the Executing Court, the respondent has proceeded to obtain writ of delivery of possession

from the Court below. Thus, according to the learned Counsel for the appellant, the respondent has committed contempt of lawful order of this

Court.

4. Learned Counsel for the respondent, on the other hand, would explain that the

order of stay was passed for a limited period i.e., till appearance of the respondent. The respondent appeared through lawyer and also filed petition for vacating the order of stay, but the petition was never listed for hearing and therefore it was not pressed.

5. It appears that this case was posted before another Bench. Learned Counsel for the parties had wanted to interpret the order dated 29.2.2008

In their own and consequently, the Bench before whom it was listed, directed this case to be posted before this Bench.

6. I have perused the order dated 29.2.2008. The order Indicates that the appeal was admitted for hearing on the substantial questions of law

invoked in the appeal. The order also indicates that IA petition No. 699 of 2008 was filed by the appellants for stay of the operation of the

impugned judgment and decree and also for stay of the execution proceedings in execution case No. 1 of 2007 pending In the Court of Munsif,

Seraikela, Kharsawan.

7. The learned Counsel for the appellants was heard and considering his submission that the appellants have been living in the portion of the suit

property and they would suffer prejudice in the event of their eviction from the house, prayer for stay was allowed with a qualifying statement that

till appearance of the respondent, the Execution Case No. 1 of 2007 pending in the Munsif, Seraikela. Kharsawan, shall remain stayed. The IA

petition was accordingly disposed of.

8. The order speaks eloquently that though prayer for stay of the operation of the impugned judgment and decree was made along with prayer for

stay of the execution proceedings, this Court felt it appropriate that till the appearance of the respondent, further proceedings in the Execution case

should be stayed, and ordered accordingly. Had the intention been for stay of the operation of the impugned judgment and decree, then such order

would have itself sufficed to operate against continuance of the Execution proceedings.

9. Since the order directs specifically that the Execution proceedings be stayed for a limited period, it is obvious that the order was not intended to

operate against the impugned judgment and decree.

In terms of the order which has been/expressed in plain simple terms-, the stay of the execution proceedings was granted till appearance of the

respondent In this appeal. It implies that as and when the respondent appears, the order of stay does not continue and under such circumstances, there could be no necessity for a separate order for vacating the order of stay. If the condition namely the appearance of respondent was fulfilled, the learned Counsel for the respondent has explained the reason as to why IA petition for vacating the order of stay could not be pressed for hearing.

10. Consider the order passed, since the respondent had appeared through her lawyer and since the order of stay was to continue till the appearance of the respondent, even if the IA petition for vacating the order of stay was not pressed, it does not make any difference, since even without mentioning, the order of stay had automatically stood vacated after the appearance of the respondent in this appeal.

11. Considering the above facts and cumstances, if, after the date of her appearance of the respondent, and considering the fact that in accordance with the correct interpretation of the order dated 29.2.2008, the order of stay was automatically vacated, in absence of extension for further period, any act or deed in terms of what has been sought to be explained by the appellant, if committed by the respondent, would not amount to contempt of Court.

12. In the facts and circumstances, I do riot find any reason for initiating a proceeding for Contempt of Court. IA No. 2406 of 2008 is accordingly rejected.