
(1999) 10 PAT CK 0017
In the Patna High Court
Case No : C.W.J.C. No. 3596 of 1998 (R)

Smt. Sabitri Devi and Others	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 07-10-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 26, Order 41 Rule 5
Constitution of India, 1950 — Article 226, 227

Citation : (1999) 3 PLJR 951

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Banerjee, for the Appellant;

Judgement

M.Y. Eqbal, J.—I have heard Mr. P.K. Banerjee, Learned Counsel for the petitioners. In view of the order which I propose to pass, no notice is required to be served on the respondents. In this writ application filed under Article 227 of the Constitution of India, the petitioners have prayed for issuance of appropriate writ/direction commanding upon the Judicial Commissioner, Ranchi to dismiss the Title Appeal No. 59/97 pending before it for want of prosecution and further commanding upon the Munsif, Ranchi, who is executing court, to proceed with the Execution Case No. 10/98 so that the petitioners would be able to get the fruits of the decree.

2. The petitioners' case is that they instituted Eviction Title Suit No. 36/92 in the court of Munsif, Ranchi against the respondents for a decree of eviction on the ground of default and personal necessity. The suit was contested by the defendants-respondents and the same was decreed in terms of the judgment and decree dated 30.6.97. Aggrieved by the said judgment and decree the respondents filed Title Appeal No. 59/97 in the court of Judicial Commissioner, Ranchi. The petitioner, who are the decree-holder, also executed the decree by filing Execution Case No. 10/98. Petitioners' further case is that notices were issued in the execution case and pursuant thereto the respondents appeared on

23.4.98. It is stated that inspite of specific direction in the decree to deliver vacant possession of the suit premises to the petitioners within three months the respondents did not comply the judgment. After appearing in the execution case the respondents started filing petition for time on the ground that they have preferred appeal before the Judicial Commissioner, Ranchi and they will obtain order of stay of the execution proceeding. Petitioners' case is that since 23.4.98 on each and every date similar petitions are being filed in the court of Munsif in Execution Case No. 10/98 and the Munsif, Ranchi has been adjourning the case in a routine manner without following the law and procedure. Petitioners' further case is that in the appeal filed by the respondents the office gave office-note as far back as on 10.9.97 pointing out some defects but the same has not yet been removed by the respondents. The respondents are even not taking any step either to move a petition for stay of the execution case or any further step in the appeal. It is alleged that the petitioners moved several times in the executing court for issuance of process for effecting delivery of possession but the court of Munsif has failed to issue the process in-spite of there being no order of stay in Title Appeal No. 59/97. The petitioners, therefore, having no way, moved this Court by filing this application.

3. More often this Court is faced with the petition under Articles 226 and 227 of the Constitution of India in which the prayer is made that subordinate courts be commanded by means of writ to proceed with long pending civil proceedings including execution cases expeditiously. It is well settled that the power of superintendence conferred upon this Court by Article 227 is not confined to administrative superintendence only but includes the power of judicial revision also even where no appeal or revision lies to the High Court under the ordinary law. The power under Article 227 of the Constitution involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. However, this power must be restricted to case of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice.

4. Before coming to the instant case, it would be useful to look into certain provisions of the Code of Civil Procedure. Order 41 Rule 5 lays down the power of the appellate court in the matter of stay of proceedings including execution Proceeding, which reads as under:--

5. Stay by Appellate Court.--(1) An appeal shall not operate as a stay of proceedings under a decree or order appealed from except so far as the Appellate Court may order, nor shall execution of a decree be stayed by reason only of an appeal having been preferred from the decree; but the Appellate Court may for sufficient cause order stay of execution of such decree.

Explanation--An order by the Appellate Court for the stay of execution of the decree shall be effective from the date of the communication of such order to the Court of first instance, but an affidavit sworn by the appellant, based on his personal knowledge, stating that an order for the stay of execution of the decree

has been made by the Appellate Court shall, pending the receipt from the Appellate Court of the order for the stay of execution or any order to the contrary, be acted upon by the Court of first instance.

(2) Stay by court which passed the decree.--Where an application is made for stay of execution of an appellable decree before the expiration of the time allowed for appealing therefrom, the court which passed the decree may on sufficient cause being shown order the execution to be stayed.

(3) No order for stay of execution shall be made under sub-rule (1) or sub-rule (2) unless the Court making it is satisfied--

(a) that substantial loss may result to the party applying for stay of execution unless the order is made;

(b) that the application has been made without unreasonable delay; and

(c) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

(4) Subject to the provisions of sub-rule (3), the Court may make an ex-parte order for stay of execution pending the hearing of the application.

(5) Notwithstanding anything contained in the foregoing sub-rules, where the appellant fails to make the deposit or furnish the security specified in sub-rule (3) of rule 1, the Court shall not make an order staying the execution of the decree.

5. From bare perusal of the aforesaid provision, it is manifest that there shall not be automatic stay of the execution proceeding under a decree or order appealed from merely filing of appeal against such decree or order unless the appellate court on sufficient ground stay the execution proceedings by passing a reasoned order. Order 21 Rule 26 gives power to the Executing Court to stay the execution of a decree for a reasonable time to enable the judgment-debtor to apply to the Court having appellate jurisdiction in respect of the decree for an order to stay the execution. Sub-rule (3) of Rule 26 provides that the executing court before making an order to stay execution impose such conditions upon the judgment-debtor as it thinks fit.

6. Petitioners have annexed copies of the entire order-sheet of Title Appeal No. 59/97 and Execution Case No. 10/98, as contained in Annexures 3 and 4 to the writ application. From perusal of Annexure 3, it appears that the appeal was filed on 23.8.97 and it was adjourned on several dates for removing the defects so that the appeal may be placed for admission. From 13.11.97 till 5.8.98 same order was passed by the appellate court directing the appellants to remove the defects.

7. A supplementary affidavit has been filed by the petitioners on 21.7.99 stating, inter alia, that till that date no application under Order 41 Rule 5 CPC was filed by the respondents in Title Appeal No. 59/97 for stay of the execution of the

decree in Execution Case no. 10/98. It is further stated that in spite of written objection made by the petitioners in the executing court against granting time on the ground that no order of stay has been passed by the appellate court, the executing court has been granting time and adjourning the execution of the decree. Similarly, from perusal of the ordersheet of Execution Case No. 10/98 (Annexure 4) it appears that from 6.6.98 a routine order is being passed on each and every date by the Munsif granting time to the judgment-debtor to obtain stay from the appellate court. A bare perusal of the order-sheet reveals that the Presiding Officer of the Executing court namely, Munsif, Ranchi has been casually postponing the execution of the decree in a routine manner giving impression that there is something wrong somewhere and thereby depriving the decree-holder from getting the fruit of the decree. This also shows how the Presiding Officer of the Executing Court is dealing with the matter. It further reveals that there is lack of sense of responsibility and seriousness in taking up old cases for disposal. Similarly the ordersheet of the appellate court reveals that how casually the adjournment was granted for several dates for removing the defects instead of dismissing the appeal for non-prosecution.

8. The High Court, in its administrative side, has remained alive to the situation and from time to time has issued instructions in the form of circular/letters for the guidance of the Presiding Officer of the Subordinate courts in the matter of granting adjournment with a view to ensure that old cases are expeditiously disposed of. It appears that the subordinate courts have either forgotten or ignoring such administrative instructions and circulars. The instant case is the glaring example where the petitioners have been deprived from the fruit of the decree when there was no order by any appellate court for stay of the execution proceeding.

9. There is no dispute that the executing court is empowered to allow time to the judgment debtor to bring stay order from the appellate court where the appeal under decree is pending but at the same time it is not within the domain of the executing court to grant adjournment after adjournment till the judgment debtor brings stay order from the appellate court. As noticed above, Order 21 Rule 26 very specifically provides that executing court shall grant reasonable time which does not mean for an unlimited period. In some matters this Court by issuing instructions and circulars directed the subordinate courts first to grant three weeks time and then two weeks time for bringing order of stay of the proceedings either from this Court or from the appellate court. I hope and trust that the subordinate courts at least realise their sense of responsibility in the matter of granting unnecessary adjournments and thereby depriving the successful party from getting the fruits of the decree. The executing court is not within its limit in adjourning the execution proceeding without any sufficient ground. It was, therefore, necessary for the petitioners to approach this Court to invoke its power of superintendence under Article 227 of the Constitution of India, which is only concerned with keeping the subordinate tribunals within their bounds. In the result, this writ application is allowed. The Executing Court

namely, Court of Munsif, Ranchi where the Execution Case No. 10/98 is pending, is directed to pass a specific order on the next date fixed granting a reasonable time as a last chance to the respondents-judgment debtors to bring order of stay of the executing proceeding from the appellate court, and in the event of failure of the respondents to bring order of stay from the appellate court, the executing court shall proceed with the execution in accordance with law. At the same time the appellate court, namely, the VIIth Additional Judicial Commissioner, Ranchi, before whom Title Appeal No. 59/97 is pending, is directed to dispose of the application under Order 41 Rule 5 CPC, if any, on the next date fixed. The appellate court is further directed not to adjourn the appeal in routine manner rather pass effective order in accordance with the procedure provided under the Code of Civil Procedure.