

(2025) 02 JH CK 1307
In the Jharkhand High Court
Case No : C.M.P. No. 126 Of 2025

Syad Asif Hussain

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-02-2025

Acts Referred:

Constitution of India, 1950 — Article 227
Code of Civil Procedure, 1908 — Section 47

Citation : (2025) 02 JH CK 1307

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Nasim Akhtar, S.K. Tiwari

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing on behalf of the petitioners as well as the learned counsel for the respondent State.

2. This petition has been filed under Article 227 of the Constitution of India whereby the prayer has been made for quashing of the order dated 08.07.2024 and 27.07.2024 passed in Execution Case No.05/2007 passed by the learned Additional Civil Judge, Junior Division, Dhanbad. The prayer is also made to maintain status-quo with regard to the suit property.

3. Learned counsel for the petitioners submits the petitioners are having right, title, interest and possession over the suit property and the said suit property was purchased by the registered sale deed being Mouza- No.51, Plot No.3370 and 2484(P) area one katha eleven chhataks. He submits that the opposite parties are making hindrance and in view of that two petitions have been filed before the learned executing court for filing objection under section 47 CPC and for taking time to file the petition. The learned court has been pleased to reject both the petitions by the orders dated 08.07.2024 and 27.07.2024. He submits

that the property is in possession of the petitioners and unnecessarily the opposite parties are trying to disturb the possession of the petitioners and in view of that, those orders are illegal and may kindly be set aside.

4. The learned counsel for the respondent State submits that there is no stay from any higher court and the learned court has rightly passed the orders and there is no illegality in the said orders.

5. It transpires that Title (Eviction) Suit No.102 of 1990 was finally decided on 08.02.2007 and for execution of the said decree, the execution case has been filed on 30.04.2007. By order dated 05.08.2009 the decree-holder was directed to file the requisites for issue of summons. In the meantime, the present case was stayed by the High Court in C.R.No.16 of 2007 and the decree-holder has filed a petition during pendency of the writ petition for issuance of D.P., however, the same was rejected in light of the stay by the High Court. The said stay order was vacated on 3.10.2018. The decree-holder has filed a petition to issue writ of D.P. which was dismissed as not maintainable and the matter was remained pending. On 23.8.2021 the appearance was completed. A fresh petition was filed for D.P. on 29.03.2023 by the decree-holder. The judgment-debtor filed a petition to recall the order dated 13.10.2018 on 18.08.2023. The said civil revision was decided by the High Court in favour of the decree-holder by order dated 11.9.2023 and against that the L.P.A was preferred by the petitioners-herein which is pending, however, no stay has been obtained by the petitioners and the matter was adjourned by the executing court and thereafter the two petitions have been filed which has been rejected by the learned court.

6. The learned court considering that the said LPA was filed on 26.08.2023, however, on 7.5.2024 the said LPA was defective and earlier sufficient time was granted and no stay has been granted. Even the LPA has not been pressed diligently. The learned court considering the judgment in the case of Rahul S. Shah v. Jitendra Kumar Gandhi and Others reported in (2021) 6 SCC 418 has proceeded and rejected the two petitions by the order dated 8.7.2024 and 27.7.2024 holding that frivolous petitions have been filed by the petitioners-herein.

7. The Court finds that there is no illegality in the orders of the learned court and it transpires that only to linger the execution of the decree, the said petitions have been filed. It has been pointed out that against the judgment of the learned trial court, no appeal has been preferred by the petitioners meaning thereby that the judgment and the decree has been accepted and there is no illegality in the impugned orders. Hence, C.M.P. No.126 of 2025 is dismissed.