

GAHC010260412023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRP(IO)/375/2023

DHANCHIT KALITA
S/O LATE BANCHIT KALITA, R/O RANGIA TOWN, WARD NO. 4, RANGIA
BAZAR, P.O. AND P.S.-RANGIA, PIN-781354, DIST-KAMRUP, ASSAM

VERSUS

BISWANATH JAJODIA
S/O BAJRANGALAL JAJODIA, R/O RANGIA TOWN, WARD NO. 4, RANGIA
BAZAR, P.O. AND P.S.-RANGIA, PIN-781354, DIST-KAMRUP, ASSAM

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.12.2023

Heard Mr. A. Paul, the learned counsel for the petitioner.

2. By this application under Article 227 of the Constitution of India read with section 151 CPC, the petitioner has invoked inherent jurisdiction of this Court to assail the order dated 04.02.2023, passed by the learned Civil

Judge (Junior Division), Kamrup, Amingaon in T.Ex. Case No. 5/2019, thereby refusing to stay the execution proceeding till disposal of Misc. (J) Case No. 8/2021.

3. The case of the petitioner is that he is the defendant in T.S. No. 14/2014, which was instituted by the respondent. The suit was decreed by judgment and decree dated 01.03.2019, passed by the learned Civil Judge (Junior Division), Kamrup, Rangia [formerly Court of Munsiff, Kamrup, Rangia]. The petitioner filed an appeal, which was registered as Title Appeal No. 1/2021.

4. No statement has been made in this application, why appeal was registered in the year 2021, when the decree was passed on 01.03.2019. Be that as it may, the petitioner had also filed an application before the learned first appellate Court for stay of execution of the decree under Order XLI, Rule 5 CPC, which was registered as Misc. (J) Case No. 8/2021.

5. In this application, the petitioner has made statement regarding proceeding filed by a third party to this application and therefore, is held to be irrelevant for the purpose of adjudication of this application. Moreover, the petitioner has not filed copy of any petition filed by such third party to support the statements made in paragraph 5 of this application for reasons best known to the petitioner. In para-6 of this application, reference is made to institution of T.S. No. 74/2022 and Misc.(J) Case No. 81/2022 for cancellation of decree and issuance of injunction to resist execution. However, copy of the plaint or injunction petitioner has not been filed by the petitioner for reasons not disclosed before the Court. Nonetheless, it appears that the said suit was also by a third party to this application and therefore, irrelevant for the purpose of this matter.

6. Be that as it may, the petitioner has made a statement in para-7 of this application that the appeal of the petitioner is yet to be admitted by the learned first appellate Court. It is projected that if the execution is not stayed, the petitioner shall suffer prejudice. The grievance of the petitioner is that by the order impugned in this application, the learned Executing Court has rejected the prayer made by the petitioner for stay of the execution. It may be mentioned that for the reasons best known to the petitioner, the application for stay is suppressed from this Court as it was not appended to this application. Thus, we do not know about its contents.

7. It may be mentioned that no attempt has been made by the Court to show that the provision of Sub-Rule (2) of Rule 5 of Order XLI of the CPC empowers the learned Trial Court to entertain the application for stay of execution after expiration of the period of limitation to file appeal.

8. The learned counsel for the petitioner has submitted that in the interest of justice, this Court has power to stay the execution proceeding. However, no attempt has been made to show any legal provision or any case law wherein it has been held that despite there being no jurisdictional error in the impugned order, the High Court in exercise of power under Article 227 of the Constitution of India can stay execution *in the interest of justice*. On the contrary, in connection with the scope of Article 227 of the Constitution of India, we may refer to the case of *Ouseph Mathai v. M. Abdul Khadir*, (2002) 1 SCC 319: AIR 2002 SC 110, where the Supreme Court of India had held that a mere wrong decision is not a ground to exercise jurisdiction under Art.227 and it was further held that High Court may intervene under Art.227 only where it is established that lower Court or Tribunal has been guilty of grave dereliction of duty or flagrant abuse of power, which has resulted in grave injustice to any

party. We may also refer to the case of *Estralla Rubber v. Dass Estate (P) Ltd., (2001) 8 SCC 97*, where the Supreme Court of India had held to the effect that finding can be set aside under Article 227 of the Constitution of India if findings are based on no evidence at all or are so perverse that no reasonable person could come to such a conclusion. Thus, Article 227 of the Constitution of India can be invoked only when the learned Court below had committed jurisdictional error. Thus, in a case like this, where the order impugned suffers from no legal infirmity, or jurisdictional error, passed in grave dereliction of duty or there was flagrant abuse of power, the Court would not have power under Article 227 of the Constitution of India to either tinker with the order dated 04.02.2023, passed by the learned Civil Judge (Junior Division), Kamrup, Amingaon in T.Ex. Case No. 5/2019 or to stay the execution proceeding.

9. The learned counsel for the petitioner had not made any attempt to demonstrate how this Court could invoke power under Section 151 CPC to stay execution proceeding and no case law has been cited on the point.

10. Therefore, this petition appears to be *ex facie* misconceived and nothing but an abuse of the process of Court. The learned counsel for the petitioner has not been able to cite any provision of law or any case citation to show that after filing and registration of the appeal against the judgment and decree, the learned Trial Court would have jurisdiction to stay the execution of the decree.

11. Thus, in light of the discussions above, the Court is inclined to hold that the impugned order dated 04.02.2023, passed by the learned Civil Judge (Junior Division), Kamrup, Amingaon in T.Ex. Case No. 5/2019, thereby refusing to stay the execution proceeding till disposal of Misc. (J) Case No. 8/2021 does not suffer from any jurisdictional error and therefore, does not

warrant any interference whatsoever either under Article 227 of the Constitution of India or under Section 151 CPC or under any other law in force.

12. Therefore, by holding that this petition is *ex facie* misconceived and abuse of the process of Court, this application stands dismissed *in limine*, at the *motion* stage, without issuance of notice on the respondent.

13. The Registry shall transmit a copy of this order before the Court of Civil Judge (Junior Division), Kamrup, Rangia to make it a part of the record of T.Ex. Case No. 5/2019. The order shall also be transmitted to the Court of the learned Civil Judge (Senior Division), Kamrup, Amingaon to make it a part of the record of Title Appeal No. 1/2021.

JUDGE

Comparing Assistant