

**HIGH COURT OF TRIPURA
AGARTALA**

CRP No.99/2024

along with

CRP No.105/2024

1. Smt. Kanan Bala Biswas, W/O. Late Sunil Biswas,

2. Sri Sachindra Sarkar, 54 years, S/O. Sri Ashwini Kumar Sarkar,

Both are Resident of Lankamura, P.S.-West Agartala, Agartala, District-West Tripura, Pin-799009.

..... Petitioner(s).

V E R S U S

1. Sri Uttam Chanda, S/O. Sri Gopal Krishna Chanda, Resident of Bhati Abhaynagar, P.O.-Agartala, P.S.-West Agartala, District-West Tripura, Pin-799002.

.....Respondent(s).

2. Sri Ashwini Kumar Sarkar, S/O. Late Purna Chandra Sarkar, Resident of Lankamura, P.O.-Lankamura, P.S.-West Agartala, District-West Tripura, Pin-799009.

.....Proforma-Respondent(s).

For Petitioner(s) : Mrs. Sujata Deb (Gupta), Advocate,
Ms. Rumpa Dey, Advocate.

For Respondent(s) : None.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

20/11/2024

Heard Mrs. Sujata Deb (Gupta), learned counsel appearing for the petitioners.

2. Both the revision petitions are at the behest of the same petitioners who are admittedly non-party to the judgment and decree passed in T.S. No.63 of 2011 dated 20.11.2012 in respect of which Execution (T) No.08 of 2018 is pending before the learned Court of Civil Judge (Jr. Division), Court No.2, Agartala, West Tripura.

3. In CRP No.99 of 2024, petitioners have sought to challenge the order dated 27.09.2024 passed by the learned Executing Court whereby the

learned Executing Court has appointed a Survey Commissioner and directed the decree holder to submit requisite fees. It has also directed the Superintendent of Police, West Tripura, Agartala to furnish information regarding expenses for deputation of police personnel and the Commissioner, Agartala Municipal Corporation for furnishing information regarding cost to be incurred in demolition of the building constructed over the suit land.

In CRP No.105 of 2024, the order dated 06.07.2024 whereby the petition under Order XXI Rule 26 of the Code of Civil Procedure (CPC, for short) filed by the petitioners was rejected is under challenge.

4. Be it noted here that earlier the petitioners had filed an application under Section 47 read with Section 151 of CPC on 29.11.2021 in which the learned Executing Court had passed an order of stay on 02.12.2021. That petition was finally rejected by order dated 13.12.2023. That was made subject matter of CRP No.13 of 2024 before this Court. Vide order dated 01.03.2024 passed in CRP No.13 of 2024 (Annexure-26 to CRP No.99 of 2024), the said petition was dismissed as not pressed after some arguments by learned counsel for the petitioners in order to pursue the restoration application of the application made under Order XXI Rule 97, 98 and 101 read with Section 151 of CPC which was dismissed for default on 21.01.2023. In the restoration petition, respondents have reportedly appeared upon summons but the application under Order XXI Rule 97, 98 and 101 read with Section 151 of CPC has not yet been restored. In the above circumstances, petitioners have laid a challenge to the order dated 06.07.2024 whereby their application under Order XXI Rule 26 of CPC was rejected by filing the revision petition (CRP No.105 of 2024) only on 04.11.2024 when the learned Executing Court had

appointed a Survey Commissioner vide order dated 27.09.2024 and also issued directions upon the Superintendent of Police, West Tripura, Agartala and Commissioner, Agartala Municipal Corporation as indicated above.

5. In this background, learned counsel for the petitioners submits that this Court in exercise of the powers under Article 227 of the Constitution of India may stay the execution of the decree as on part of the suit land, some of the structures of petitioners' building are situate. Grave and irreparable injury would result if the judgment and decree is executed in the meantime till the application under Order XXI Rule 97, 98 and 101 read with Section 151 of the CPC is decided.

6. I have heard learned counsel for the petitioners and taken note of the relevant dates and material facts placed from record. In order to deal with the contention of the petitioners, it is important to refer to the provisions of Order XXI Rule 26 of the CPC which reads as under:

"26. When Court may stay execution.—(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) **Power to require security from, or impose conditions upon, judgment-debtor.**—Before making an order to stay execution, or for the restitution of property or the discharge of the judgment-debtor, [the Court shall require] such security from, or impose such condition upon, the judgment-debtor as it thinks fit."

7. A bare perusal thereof would indicate that the Court to which a decree has been sent for execution shall, upon sufficient cause being shown,

stay the execution of the decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

8. Petitioners are not the judgment debtors but strangers to the decree. The learned Executing Court has after discussion of the plea raised by the petitioners in the said petition and the provisions of Order XXI Rule 26 of CPC rejected the same by the order impugned dated 06.07.2024 in CRP No.105 of 2024. Be it also indicated herein that the petition under Section 47 read with Section 151 of the CPC filed by the petitioners earlier on 29.11.2021 stood already rejected on 13.12.2023 and the challenge thereto was not pressed before this Court in CRP No.13 of 2024. As on date, the application under Order XXI Rule 97, 98 and 101 read with Section 151 of the CPC also is not on Board before the learned Executing Court as the application for restoration is still pending.

9. Moreover, upon perusal of the order dated 06.07.2024 and upon hearing learned counsel for the petitioners, this Court does not find any error warranting interference in the order rejecting the said application as on the face of it such an application by a third party was not entertainable. Though learned counsel for the petitioners has sought to invoke the inherent powers of the Court under Section 151 of the CPC during course of submission but no such prayer was made before the learned Executing Court while pressing the

application under Order XXI Rule 26 of the CPC. In such circumstances, when the execution of the decree passed on 20.11.2012 remains pending, this Court would be loath to stay execution of the said decree in view of the decision rendered by the Apex Court in the case of ***Rahul S. Shah versus Jinendra Kumar Gandhi & others*** reported in (2021) 6 SCC 418 and that too, when the application under Section 47 read with Section 151 of the CPC stood earlier rejected by the Executing Court on 13.12.2023 and the order dated 06.07.2024 impugned in CRP No.105 of 2024 rejecting the application under Order XXI Rule 26 of the CPC does not warrant any interference by this Court under Article 227 of the Constitution of India and moreover, when the application under Order XXI Rule 97, 98 and 101 read with Section 151 of the CPC is yet to be restored by the learned Executing Court. In such circumstances, the approach of the learned Executing Court to appoint a Survey Commissioner to submit a report as to the suit land for carrying out its execution cannot be faulted with as there is no basis for the Executing Court to lay its hands off in the matter of execution of the decree dated 20.11.2012 in the execution case pending since 2018 the execution of which has been considerably delayed for over 6(six) years by now.

10. In those circumstances, this Court does not find any reason to interfere in the impugned orders dated 27.09.2024 and 06.07.2024 passed by the learned Executing Court in CRP No.99 of 2024 and CRP No.105 of 2024 respectively.

However, the learned Executing Court would endeavour to take a decision on the application for restoration of the petition under Order XXI Rule

97, 98 and 101 read with Section 151 of the CPC being pursued by the petitioners in an expeditious manner.

The instant revision petitions are dismissed, however, with the aforesaid observations.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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