



IN THE HIGH COURT OF ORISSA AT CUTTACK
CMP No.1624 of 2025

Abdul Jabar @ Zabar

.....

Petitioner

Represented by Adv. –
Mr. Upendra Kumar Samal,
Senior Advocate

-versus-

Abdul Rafiq and others

.....

Opposite Parties

Represented by Adv. –

Mr. Uma Charan Mishra

Mr. Maheswar Mohanty

CORAM:
HON'BLE MR. JUSTICE ADITYA KUMAR MOHAPATRA

J U D G M E N T

Date of Hearing and Judgment: 10.07.2026

A.K. Mohapatra, J. :

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. Heard Mr. U.K. Samal, learned senior counsel appearing for the Petitioner and Mr. Maheswar Mohanty, learned counsel for Opposite Party Nos. 2 and 4 and Mr. Mishra, learned counsel appearing for Opposite Party No.7 to the CMP application. Perused the CMP application as well as the prayer made therein.
3. The judgment-debtor in Execution Case No.2 of 2021 which arises out of C.S. No.116 of 2008 has approached this Court by filing



the present CMP application under Article 227 of the Constitution of India thereby challenging the impugned order dated 04.07.2025 at Annexure-3 passed by the learned Civil Judge (Senior Division), Kantabanji in Execution Petition No.2 of 2021.

4. Learned senior counsel appearing for the Petitioner at the outset contended that C.S. No.116 of 2008 was filed before the learned trial Court by the original Plaintiff, who happens to be the grandfather of the Opposite Parties for eviction and realization of the arrear rent. He further contended the suit was decreed ex-parte on 10.08.2009. Learned senior counsel for the Petitioner further stated before this Court that after the suit was decreed, the Plaintiff-decree holder immediately filed an Execution Case No.03 of 2009. The said case execution case ended in compromise and the execution proceeding was treated to be 'not pressed' on the basis of a memo filed by the Plaintiff on dated 16.11.2012, which was accepted in the Lok Adalat as is evident from order dated 23.12.2012.

5. Learned senior counsel for the Petitioner would further contended that while the matter stood thus, the grandson of the decree holder filed the present Execution Case No.2 of 2021 seeking execution of the ex-parte decree dated 10.08.2009 passed in C.S. No.116 of 2008. In the said execution application the present Petitioner, who happens to be a judgment-debtor against whom the decree was passed ex-parte, filed an objection under section 47 of CPC on 09.03.2022. Such application under Section 47 of the CPC filed by the Petitioner having been rejected by the impugned order dated 04.07.2025, at Annexure-3, the judgment-debtor and the Defendant of the suit have approached this Court by filing the present CMP application. He further submitted that after dismissal of



his application under Section 47 of CPC the Petitioner had filed another application strictly in terms of the GRCO (Civil) which was filed on 01.09.2025 and the same has been registered as CMA No.17 of 2025. Moreover, since the Petitioner had left out certain important grounds he has also filed an application seeking amendment to the Section 47 application, under Order 6 Rule 17 of the CPC. Both such CMP as well as the application seeking amendment to such CMA are pending before the learned trial Court for final adjudication.

6. In course of hearing, learned senior counsel for the Petitioner contended that the earlier execution petition bearing No.03 of 2009 was disposed of as not pressed on the basis of a memo filed by the Plaintiff. Therefore, the question of filing a second execution proceeding does not arise. Accordingly, the Defendant-judgment-debtor-Petitioner raised an application by filing an application before the learned Executing Court thereby raising objection to the acceptance and registration of the subsequent Execution Case No.2 of 2021. Further, referring to the impugned order dated 04.07.2025, learned senior counsel for the Petitioner contended that the learned Executing Court rejected the objection filed by the Petitioner primarily on two grounds, viz, such an objection is not maintainable as no matter could be dismissed in Lok Adalat and, the order passed by the Lok Adalat and that the objection filed by the Petitioner was not in conformity with the provisions contained in the GRCO (Civil). In reply to the aforesaid grounds of rejection taken by the learned Executing Court. Learned senior counsel for the Petitioner contended before this Court that the validity of the order passed in the Lok Adalat can only be tested and tried by filing a CMP application under Article 226 and 227 of the Constitution of India. In the aforesaid



context, learned senior counsel for the Petitioner referred to the judgment of the Hon'ble Supreme Court in ***State of Punjab and another vs. Jalour Singh and others*** reported in (2008) 2 SCC 660. He also referred to the judgment in ***Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others*** reported in (2018) 13 SCC 480.

7. On perusal of the aforesaid decisions, this Court found that the Hon'ble Supreme Court has reiterated the position of law that any order passed in the Lok Adalat can only be challenged by filing an application under Article 226 and 227 of the Constitution of India and the same has been accepted to be the settled position of law as the same has been pronounced in exercise of the power of the Hon'ble Supreme Court under Article 141 of the Constitution of India. There is no quarrel with regard to the aforesaid proposition among the Parties before this Court in the present CMP application. In view of the aforesaid two judgments of the Hon'ble Supreme Court, Mr. Samal, learned senior counsel appearing for the Petitioner, contended that the learned Executing Court has committed any illegality while passing order dated 04.07.2025, inasmuch as the judgment-debtor was not provided an opportunity to file his objection although the grandson of the original Plaintiff and decree-holder filed a second execution case.

8. Per contra, learned counsels Mr. Mohanty and Mr. Mishra appearing on behalf of the respective Opposite Parties submitted before this Court that there is no bar in law to file a second execution case. They further disputed the memo filed before the Lok Adalat with a prayer not to press the pending execution petition on 16.11.2012. The filing of such memo was objected to on the ground



that the original decree holder Plaintiff died on 06.11.2012, however the memo has been filed with a prayer to not press the execution case on 16.11.2012. He further contended that in the event the decree still remains unexecuted, it is open to the decree holder to file the successive execution petition and there is no bar in law in filing and entertaining such execution petition by the decree holder and the same being entertained by the Executing Court. In the aforesaid context, learned counsel appearing for the Opposite Parties referred to the judgment of the Hon'ble Supreme Court in the matter of ***Shivashankar Prasad Sah vs. Baikunth Nath Singh*** reported in ***AIR 1969 SC 971***. Learned counsels appearing for opposite party has laid emphasis on Para-6 of the aforesaid judgment since the same is relevant for the purpose of the present case. For better appreciation, the same has been quoted herein below.

“The courts in India have generally taken the view that an execution petition which has been dismissed for the default of the decree-holder though by the time that petition came to be dismissed, the judgment debtor had resisted the execution on one or more grounds, does not bar the further execution of the decree in pursuance of fresh execution petitions filed in accordance with law-see Lakshmibai Anant Kondkar v. Ravji Bhikaji Kondkar, 31. Bom LR 400=(AIR 1929 Bom 217). Even the dismissal for default of objections raised under Section 47, Civil Procedure Code does not operate as res judicata when the same objections are raised again in the course of the execution-see Bahir Das Pal v. Girish Chandra Pal, AIR 1923 Cal 287; Bhagawati Prasad Sah v. Radha Kishun Sah, AIR 1950 Pat 354; Jethmal and Ors. v. Mst. Sakina, AIR 1961 Raj 59; Bishwanath Kundu v. Smt. Subala Dassi; AIR 1962 Cal 272.. We do not think that the decision in Ramnarain v. Basudeo, ILR 25 Pat 595= (AIR 1947 Pat 298) on which the learned Counsel for the appellant placed great deal of reliance is correctly decided. Hence



we agree with the High Court that the plea of res judicata advanced by the appellant is unsustainable”

9. In view of the aforesaid law laid down by the Hon’ble Supreme Court in ***Shivashankar Prasad Sah’s case*** (*supra*), learned counsel appearing for the Opposite Party contended that there is no bar on the part of the decree holder to file a second execution case. Thus, it was argued that the Executing Court has not committed any illegality in entertaining the execution case. They further contended that since the objection application filed by the judgment-debtor was not in consonance with the provisions contained in the GRCO (Civil), the same has been rejected by the learned trial Court. In such view of the matter, learned counsel appearing for the Opposite Parties contended that the learned Executing Court has not committed any illegality in entertaining the second execution application and, that it has also not committed any gross error of law by passing order dated 04.07.2025. Accordingly, it was prayed that the CMP application filed at the instance of the judgment-debtor, being devoid of merit, is liable to be dismissed.

10. Having regard to the submission made by the learned senior counsel for the Petitioner as well as learned counsels appearing for the Opposite Parties, on a careful analysis of their submission as well as the factual background of the present case, further on a close scrutiny of the impugned order dated 04.07.2025, this Court observes that the validity of order dated 04.07.2025 thereby rejecting the judgment-debtor’s objection is to be tested in the present CMP application in exercise of the powers conferred upon this Court under Article 227 of the Constitution of India. While examining the order dated 04.07.2025, this Court is conscious of the scope and jurisdiction of this Court under Article 227 of the Constitution of



India. By virtue of the order dated 04.07.2025, the learned Executing Court, while entertaining the second execution application of the grandson of the original Plaintiff-decree-holder, rejected the judgment-debtor's objection to the execution of the decree on the ground that the execution case could not have been dismissed in Lok Adalat and, apparently, the same is erroneous on the face of it.

11. Therefore, the learned Executing Court decided to proceed further in the matter after rejecting the objection submitted by the judgment debtor to the execution of the decree by virtue of the impugned order dated 04.07.2025. It also appears that the learned Executing Court has also made an observation that the objection was not in conformity with the provisions of the GRCO (Civil). In effect, the order dated 04.07.2025 passed in Execution Case No.2 of 2021, while executing a decree of the year 2009, has taken away the right of the judgment debtor to file an objection application to the executability of such decree. It is needless to mention here that a statutory right has been confirmed upon the JDRs to raise an objection with regard to the executability of the decree under Section 47 of the CPC, therefore the same is to be strictly adhered to by the Executing Courts and such right conferred upon the judgment-debtor cannot be taken away on some technical grounds. Substantial compliance of the procedural law is the mandate of the statute.

12. On a careful analysis of the factual background of the present case, further taking note of the submissions made by the learned counsels appearing for the respective Parties, this Court observes that there exists no dispute with regard to the proposition that a second execution case was always maintainable in the event a part of the entire decree still remains unexecuted. However, the same shall be



subject to the period of limitation. Moreover, while holding that a second execution case is maintainable, the right of the judgment debtor under Section 47 to raise an objection to the executability of the decree also cannot be taken away and such observation of this Court get supports from the judgment of the Hon'ble Supreme Court as reported in ***Shivashankar Prasad Sah's*** (*supra*). At this juncture, learned senior counsel appearing for the Petitioner contended that he does not want to press CMA No.17 of 2025 as well as the application filed seeking amendment to such application, with liberty to file a composite application within a short time.

13. In such view of the matter this Court, while disposing of the present CMP application, permits the Petitioner to withdraw CMA No.17 of 2025 as well as the application filed under Order 6 Rule 17 of the CPC. Further, liberty is granted to the Petitioner to file a fresh objection application strictly in terms of the GRCO within a period of ten days from today after serving a copy thereof on the decree-holder. In the event such objection is filed by the decree holder, the learned Executing Court shall proceed with the hearing of such application and every endeavour shall be made to dispose of the application within a period of four weeks from the date of filing of such objection after providing an opportunity of hearing to both sides.

14. Accordingly, the Parties are directed to appear before the learned Executing Court on 27th July, 2026. Further, liberty is granted to the decree-holder to file their objection to the Section 47 application of the Petitioner within a week from the date of receiving a copy of the Section 47 application. The Parties are directed to cooperate with the learned Executing Court for an early disposal of



such objection application and, accordingly, order dated 04.07.2025 at Annexure-3 is hereby set aside.

15. With the aforesaid observation and direction, the CMP application stands disposed of.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The, 10th July, 2026/S. K. Sethi, P.A.

Signature Not Verified

Digitally Signed
Signed by: SISIR KUMAR SETHI
Designation: PERSONAL ASSISTANT
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 15-Jul-2026 20:10:15

