

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10492 of 2011

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Smt.Saroj Devi & Ors

.... Petitioner/s

Versus

Asha Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Narayan Sinha, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 05-10-2018

Petitioners before this Court are decree holder of Execution Case No. 08 of 2006 pending in the court of Civil Judge Junior Division, Rosera, Samastipur. They have filed this writ application for quashing the order dated 20.02.2007 whereby and whereunder execution case filed by the petitioners was stayed till the disposal of Title Appeal No. 75 of 2006 pending in the court of District Judge, Samastipur.

2. Heard learned counsel for the petitioner and perused the record.

3. It appears that the suit filed by these petitioners was decreed and the said decree was put for execution by filing Execution Case No. 08 of 2006. The judgment debtor filed a petition before the court of Munsif on 16.01.2007 and 20.01.2007 for staying the said execution proceeding. The petitioners filed a rejoinder and the court below after hearing both sides stayed the further proceeding of execution



case till the disposal of title appeal.

4. Referring to the provision of Order XXI Rule 26 of Code of Civil Procedure, the learned counsel submits that the executing court had or has no jurisdiction to stay the further proceeding of the execution case for indefinite period and so the impugned order is not sustainable and is fit to be set aside.

5. On going through the provision of Order XXI Rule 26 CPC, it is manifest that the executing court can stay the execution of 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 the execution proceeding. The judgment-debtor has already filed an appeal before the District Judge. The judgment-debtor has not filed any petition under Order XLI Rule 5 of the Code of Civil Procedure before the appellant court to get the execution matter stayed. The Hon'ble Apex Court in a case of Utter Pradesh State Vs. Mohd. Nooh reported in AIR 1958 SC 86 at para 13 has observed that there is nothing in the Indian Law to warrant the suggestion that the decree or order of the Court or tribunal of the first instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective. The Hon'ble Court in a case of Asian Resurfacing of Road Agency Private Limited



Vs. C.B.I. reported in 2018 (2) PLJR SC 329 at para 36 has observed that in all pending matters before the High Court or other courts relating to PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on above parameters. Same course may also be adopted by civil or criminal appellate/revisional courts under the jurisdiction of the High Courts. The trial courts may, on expiry of above period, resume the proceeding without waiting for any other intimation unless express order extending stay is produced.

6. In view of above discussions and proposition of law laid by Hon’ble Apex Court, I find that the court below has committed jurisdictional error in staying the further proceeding of execution case till the disposal of title appeal. The impugned order is therefore legally not sustainable and is accordingly set aside and this writ application is allowed. The court below is directed to proceed with the execution case in accordance with law.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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