

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.47 of 2019**

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Mundrika Ram S/o Late Bhikhari Ram, Resident of Village- Raipatti  
Dighwara, P.S.- Dighwara, District- Saran ... .. Judgment debtor/Petitioner  
Versus

1. Maheshwar Prasad Singh,
2. Hareshwar Prasad Singh,  
Both sons of Late Sheo Narayan Singh,
3. Musmat Rite Devi, W/o Late Akhileshwar Prasad Singh,
4. Musmat Rameswari Devi, W/o Late Sheo Narayan Singh,  
All residents of village- Raipatti, Dighwara, P.S.- Dighwara, District-  
Saran. .... Decree Holders/Respondent 1st Set
5. Dhanpatiya W/o Late Chandrika Ram,
6. Ajai Paswan S/o Late Chandrika Ram,
7. Bindu Kumari,
8. Champa Kumari,
9. Putul Kumari,  
All D/o Late Chandrika Ram,
10. Anita Devi W/o Late Raju Kumar,
11. Soljer Kumar,
12. Badal Kumar,
13. Aaryan Kumar,
14. Chhotu Kumar,  
All S/o Late Raju Kumar,
15. Jasiya Devi, W/o Nandlal Ram @ Nandu Ram,
16. Suraj Kumar,
17. Vishal Kumar,  
Both sons of Late Nandlal Ram @ Nandu Ram,
18. Aarati Kumari,
19. Khusbu Kumari,  
Both S/o Nandlal Ram @ Nandu Ram,  
All residents of Village- Raipatti Dighwara, P.S.- Dighwara, District-  
Saran.

... .. Judgment Debtor/ Respondent 2nd set

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**Appearance :**

|                      |   |                                      |
|----------------------|---|--------------------------------------|
| For the Appellant/s  | : | Mr. Ajay Kumar, Advocate             |
|                      | : | Mr. Dewendra Narayan Singh, Advocate |
| For the Respondent/s | : | Mr.                                  |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 12-07-2019**

Heard Mr. Ajay Kumar , learned counsel for



the petitioner.

2. In the instant application preferred under Article 227 of the Constitution of India, the petitioner has prayed for quashing the order dated 04.10.2018 passed by the learned Sub-Judge, Sonapur in Execution Case No.01 of 2016 whereby the petition dated 22.06.2018 filed by the petitioner to stay further proceeding in the execution case has been declined.

3. Learned counsel appearing for the petitioner submitted that the learned Sub-Judge, Sonapur while passing the impugned order has grossly erred by declining to stay the further proceeding of the execution case more particularly when admittedly the suit land is a residential house. He submitted that against the judgment and decree which has been passed by the appellate court on 15.01.2018, Second Appeal No.202 of 2018 has already been filed before this Court, which is pending adjudication. He submitted that once the appeal has been filed and is pending before this Court, it was incumbent upon the executing court to stay the further proceedings in the execution case. He pleaded that the executing court has completely overlooked the provisions prescribed under Order 21, Rule 26 of the Code of Civil Procedure (for short 'CPC').

4. The brief facts of the case leading to the



present miscellaneous appeal are that the plaintiffs/respondent 1st set had filed Title Suit No.297 of 1998 in the Court of Sub-Judge, Saran, Chapra seeking relief for declaration of title as well as recovery of possession after removal of construction made by the defendant/petitioner. After notice, the petitioner entered into appearance and filed his written statement controverting the assertions made by the plaintiff. After recording the evidence on behalf of the plaintiff and the defendant, the learned Sub-Judge decreed the suit vide judgment dated 30.04.2004, which was assailed by the petitioner in Title Appeal No.12 of 2004, but the appeal was dismissed vide judgment dated 03.01.2018. The decree was passed on 15.01.2018 by the appellate court.

5. Being aggrieved by the judgment and decree passed by the courts below, the petitioner filed Second Appeal No.202 of 2018, which is still pending before this Court.

6. After more than five months of passing of the decree by the appellate court, the petitioner filed an application in the Court of Sub-Judge in Execution Case No.01 of 2016 on 22.06.2018 praying therein to adjourn the hearing of the execution case so that an order of stay could be obtained from the High Court in the second appeal.



7. Having heard the parties, the learned Sub-Judge, Saran, Chapra vide order dated 04.10.2018 dismissed the application filed by the petitioner.

8. While passing the order dated 04.10.2018, the learned Sub-Judge has recorded that the execution case has been filed for recovery of possession and the proceeding in the execution case has reached to an advanced stage. She has also taken into consideration the fact that though a second appeal has been filed, no order of stay has been granted by the High Court.

9. It has been pleaded by the learned counsel for the petitioner that while passing the order impugned, the executing court has completely over looked the provisions prescribed under Order 21 Rule 26 of the CPC.

10. Sub Rule (1) of Rule 26 of Order 21 provides that 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.

11. The aforesaid provision makes it clear that power to grant stay of execution by the court to which a decree has been sent for execution is for a limited purpose in order to enable the judgment-debtor to apply to the court by which the decree was passed or to any Court having appellate jurisdiction for an order to stay execution..

12. Here in the present case, admittedly an appeal preferred by the petitioner against the judgment of the trial court on 30.04.2004 was dismissed vide judgment dated 03.01.2018. The appellate court passed its decree on 15.01.2018.

13. After passing of the decree, the petitioner did not file any application for stay of execution promptly before the executing court. He filed the application for stay on 22.06.2018. The application was not filed in order to enable him to either approach the court by which the decree was passed or the court before which the appeal would lie.

14. It would be relevant to note here that an appeal shall not operate as an automatic stay of proceedings under a decree. An execution of a decree shall not be stayed by



reason only of an appeal having been preferred from the decree.  
It is admitted by the petitioner that till date execution of decree has not been stayed in the second appeal preferred by the petitioner.

15. Under the facts and circumstances of the case, in the opinion of this Court, no error can be found with the order impugned passed by the executing court.

16. The application, being devoid of any merit, is dismissed.

**(Ashwani Kumar Singh, J)**

Md. S/-

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