

**\*THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**+ CIVIL REVISION PETITION No.2786 OF 2019**

% 07—02—2020

# Mohd.Sharfoddin (died) per LRs  
Shaheda Begum and Others

...Petitioners

vs.

\$ Md.Zaheeruddin and Others

... Respondents

!Counsel for the Petitioner: Sri W.B.Srinivas

^Counsel for Respondent No.1: Sri Vedula Srinivas

^Counsel for Respondent Nos.2 to 4: --

<Gist :

>Head Note :

? Cases referred

1. AIR 1973 SC 528
2. AIR 1982 SC 686
3. AIR 1989 ORISSA 260
4. 2003 (6) ALD 788

IN THE HIGH COURT FOR THE STATE OF TELANGANA  
HYDERABAD

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CIVIL REVISION PETITION No.2786 OF 2019

Between:

Mohd.Sharfoddin (died) per LRs  
Shaheda Begum and Others

...Petitioners

And

Md.Zaheeruddin and Others

... Respondents

**JUDGMENT PRONOUNCED ON: 07.02.2020****THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

1. Whether Reporters of Local newspapers  
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be  
Marked to Law Reporters/Journals? :
3. Whether His Lordship wishes to  
see the fair copy of the Judgment? :

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**T.AMARNATH GOUD, J**

**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD****CIVIL REVISION PETITION No.2786 of 2019****ORDER:**

This Civil Revision Petition is directed against the order dated 21.11.2019 in E.A.No.70 of 2019 in E.P.No.90 of 2011 in O.S.No.244 of 2006 on the file of the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Sangareddy (for short, execution Court).

2. The brief facts of the case are that respondent No.1 filed O.S.No.244 of 2006 before the executing Court against Mohd.Sharfoddin, father of the petitioners herein, and respondent Nos.2 to 4 herein for specific performance of an agreement of sale. The said suit was transferred to the Court of Additional Junior Civil Judge, Sangareddy and re-numbered as O.S.No.441 of 2007. As Mohd.Sharfoddin did not contest the matter, he was set *ex parte* on 21.09.2006. Respondent Nos.2 to 4 herein filed a common written statement admitting the suit claim and prayed to decree the suit. Accordingly, the said suit was decreed, by judgment and decree dated 30.01.2008, against respondent Nos.2 to 4 under Order XV Rule 1 of the Civil Procedure Code, 1908 (for short, CPC). Thereafter, Mohd.Sharfoddin filed an application to set aside *ex parte* decree passed against him along with condonation of delay application in I.A.No.1985 of 2008, but the same was dismissed on 30.12.2008, upon which, his right to file written statement stood forfeited. Subsequently, the suit was re-transferred to the execution Court with the same number. Mohd.Sharfoddin though

contested the suit, he could not file written statement and adduce evidence in view of forfeiture of his right in the order dated 30.12.2008, and the suit was decreed against him by judgment and decree dated 09.06.2011. The said judgment and decree became final as no appeal was preferred by the defendants.

3. Thereafter, respondent No.1 filed E.P.No.90 of 2011 before the execution Court. While E.P.No.90 of 2011 was pending, Mohd.Sharfoddin died on 29.12.2017 and the petitioners herein were brought on record as the legal heirs of Mohd.Sharfoddin. Thereafter, the petitioners/legal heirs filed E.A.No.70 of 2019 under Order XXI Rule 29 of the CPC stating that they filed a suit in O.S.No.251 of 2019 before the Senior Civil Judge, Sangareddy (for short, trial Court) against the respondents for partition and separate possession in respect of the suit schedule property; that in the said suit, they filed I.A.No.1236 of 2019 seeking a direction to the respondents not to alienate the suit property and I.A.No.1237 of 2019 to stay the execution proceedings in E.P.No.90 of 2011 in O.S.No.244 of 2006 and they are pending adjudication; and that respondent No.1, knowing the pendency of the said suit, suppressed the same and insisting the execution Court for getting execution of the document and sought to stay the execution of E.P.No.90 of 2011 till disposal of O.S.No.251 of 2019, which is pending before the trial Court.

4. The execution Court, on consideration of the record, declined to accept the plea of the petitioners and dismissed E.A.No.70 of

2019 by order dated 21.11.2019. Aggrieved thereby, the present Civil Revision Petition is filed.

5. Sri W.B.Srinivas, learned counsel for the petitioners, submits that as per the provisions of Order XXI Rule 29 of CPC, the Court which passed the decree has the power to stay its execution. As the subject matter of the suit pending before the trial Court and the execution Court is one and the same and parties to both the suits are also one and the same, the petitioners, by invoking Order XXI Rule 29 of CPC, filed E.A.No.70 of 2019 before the execution Court seeking to stay of execution of the proceedings in E.P.No.90 of 2011 till disposal of O.S.No.251 of 2019 pending before the trial Court. But, the execution Court, by misinterpreting the said provision, erroneously dismissed E.A.No.70 of 2019 and prays to allow the present CRP. In support of his arguments, he relied upon **Shaukat Hussain Alias Ali Akram V. Smt.Bhuneshwari Devi (Dead) by LRs.<sup>1</sup>, Krishna Singh V. Mathura Ahir<sup>2</sup>, Pramoda Chandra V. Ajaya Kumar<sup>3</sup> and B.Anil Kumar V. Sriram Chits Limited<sup>4</sup>.**

6. Sri Vedula Srinivas, learned counsel for respondent No.1, submits that for maintainability of stay under Order XXI Rule 29 CPC, there should be a suit pending between the same parties in the EP for the same subject. In the present case, though the parties and the property are same, the EP is pending before the execution Court and the suit is pending before the trial Court and

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<sup>1</sup> AIR 1973 SC 528

<sup>2</sup> AIR 1982 SC 686

<sup>3</sup> AIR 1989 ORISSA 260

<sup>4</sup> 2003 (6) ALD 788

hence, no stay can be granted as per Order XXI Rule 29 of CPC. He further submits that the judgment debtor cannot resort to Order XXI Rule 29 of CPC merely because they have not put forward a plea which were opened to them at the time when the decree was obtained against them earlier. If such resort to Order XXI Rule 29 of CPC is permitted, it would enable judgment debtors to bypass the provisions of constructive *res judicata* and protect the execution proceedings endlessly. Basing on the above submissions, the learned counsel prays to dismiss the present Civil Revision Petition. In support of his arguments, he also relied on the decision in **Shaukat Hussain Alias Ali Akram's** case (supra).

7. It is necessary to refer to Order XXI Rule 29 of CPC which reads as under:

**“29. Stay of execution pending suit between decree-holder and judgment-debtor:-**

Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.”

8. A perusal of said rule, it is clear that there should be simultaneously two proceedings in one Court. One is the proceeding in execution at the instance of the decree holder against the judgment debtor and the other a suit at the instance of the judgment debtor against the decree holder. That is a condition

under which the Court in which the suit is pending may stay the execution before it.

9. In **Shaukat Hussain Alias Ali Akram's** case (supra), the Apex Court in paras 6 and 7, dealt with the said rule in detail and held as follows:

“6. ...It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the, instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. ...But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such Court. The words "such Court" are important. "Such Court" means in the context of that rule the Court in which the suit is pending. In other words, the suit must be one not only pending in that Court but also one against the holder of a decree of that Court. That appears to be the plain meaning of the rule.

7. It is true that in appropriate cases a Court may grant an injunction against a party not to prosecute a proceeding in some other Court. But ordinarily Courts, unless they exercise appellate or revisional jurisdiction, do not have the power to stop proceedings in other Courts by an order directed to such Courts. For this specific provisions of law are necessary. Rule 29 clearly shows that the power of the Court to stay execution before it flows directly from the fact that the execution is at the instance of the decree-holder whose decree had been passed by that court only. If the decree in execution was not passed by it, it had no jurisdiction to stay the execution. In fact this is emphasised by Rule 26 already referred to. In the case before us the decree sought to be executed was not the decree of Munsif 1st Court Gaya but the decree of the Subordinate Judge, Gaya passed by him in exercise of his Small Cause Court jurisdiction. It is, therefore, obvious that the Order staying execution passed by the Munsif, Gaya would be incompetent and without jurisdiction.”

10. Therefore, it is clear from the above judgment that to grant stay under Order XXI Rule 29 of CPC, there should be simultaneously two proceedings in one Court and the suit must be

one not only pending in that Court but also one against the holder of a decree of that Court.

11. In **Krishna Singh's** case (supra), **Pramoda Chandra's** case (supra) and **B.Anil Kumar's** case (supra), the Apex Court, the High Court of Orissa and this Court took the same view and hence, they cannot help the petitioners.

12. It is to be noted that the role of execution Court is to execute its orders by proceeding with the execution petition. To stay the EP proceedings, the aggrieved party/defendant, in the circumstances of the case, has to approach appellate Court, but not the executing Court. It may further be noted that in the present case, no suit is pending before the execution Court. The judgment and decree in O.S.No244 of 2006 dated 09.06.2011 has attained finality as no appeal is preferred, and therefore, at this stage, it is not open for the petitioners to seek stay of EP proceedings in the execution Court.

13. It is to be further noted that the words 'such Court' in Order XXI Rule 29 of CPC is the Court in which the suit is pending. In the present case, EP No.90 of 2011 in O.S.No.244 of 2006 is pending before the Principal Junior Civil Judge-cum-Judicial Magistrate of First Class, Sangareddy and O.S.No.251 of 2019 is pending before the Senior Civil Judge, Sangareddy. So, going by the dictum of the judgment in **Shaukat Hussain Alias Ali Akram's** case (supra), in order for granting of stay of EP proceedings, a

separate suit involving the same subject property and between the same parties must also be pending before the same Court. In the present case, such a suit involving the same subject property, and between the same parties, is pending before the trial Court, which is a different Court from the execution Court and hence, it can be said that the cases are not pending in one Court/such Court. In order to stay execution proceedings, the pre-condition is that there must be a suit pending before the same Court filed by the judgment debtor against the decree holder. Therefore, the two Courts being different from each other, the execution Court is right in denying to grant stay of EP proceedings before it.

14. In that view of the matter, I am of the view that there is no irregularity or legal infirmity in the impugned order and the Civil Revision Petition is liable to be dismissed.

15. Accordingly, the Civil Revision Petition is dismissed. No costs. Miscellaneous petitions pending, if any, shall stand closed.

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**T.AMARNATH GOUD, J**

Date: 07.02.2020

Note: L.R. Copy to be marked.

B/o. TJMR