

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.199 of 2022**

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Ram Chandra Ram Son of Late Saukhi Ram, Resident of Village - Dumari,
P.S. - Sono, District- Jamui Presently, Residing at Village - Oraiya, P.S. -
Jhajha, District- Jamui.

... .. Petitioner/s

Versus

Savitri Devi @ Rameshwari Devi Wife of Ram Autar Ram Resident of
Village - Dumari, P.S. - Sono, District- Jamui, Presently Residing At Village -
Oraiya Rjala, P.S. Jhajha, District- Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhanendra Chaubey
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

3 19-05-2022 The learned counsel for the petitioner is directed to
remove all the defects pointed out by the office within one
month.

I have already heard the learned counsel for the
petitioner.

Being aggrieved by the order dated 24.03.2022 passed
in Eviction Execution Case No. 03/19 by the learned Munsif-IV,
Jamui, the present civil miscellaneous petition has been
preferred.

In eviction suit, a decree of eviction was passed in
favour of the decree-holder against the petitioner/judgment-
debtor and the judgment-debtor was ordered to hand over the
possession of the suit premises within sixty days of the



judgment and decree. Within the stipulated period, the judgment-debtor did not hand over the vacant possession, as such, Execution Case No. 03/19 was filed by the decree-holder. Despite the notices, the judgment-debtor did not appear, as such the learned Executing Court passed *ex parte* order for delivery of possession and when Nazir went to execute the decree, the judgment-debtor and his wife fled away therefrom after closing the door. This fact is evident from the impugned order.

The petitioner/judgment-debtor filed a petition under Order XXI, Rules 26 and 29 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') to stay the further proceeding of execution, as he has preferred revision before this Court. The provisions of Order XXI, Rules 26 and 29 of the Code are quoted herein below:

"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 conditions upon, the judgment-debtor as it thinks fit.*

***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 16[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.]

A bare perusal of Order XXI, Rule 26 of the Code makes it clear that this provision has been enacted only 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. The intent of this provision is to facilitate the judgment-debtor for obtaining an order of stay by an Appellate Court or by the Court which passed the decree. In the present case, a revision has been preferred, but the Revisional Court has not passed the stay order, as such, this provision is not applicable at all.

Similarly, the Executing Court may stay the execution proceeding under Order XXI, Rule 29 of the Code. When a suit is pending in any Court against the decree-holder on the part of person, against whom the decree was passed, the Court may stay



the proceeding. In the instant case, there is no any suit as stipulated by this provision, as such, this provision is also not attracted in the instant case.

In my view, the learned court below did not commit any jurisdictional error while rejecting the petition for stay of the execution proceeding under Order XXI, Rules 26 and 29 of the Code. Accordingly, this civil miscellaneous petition is dismissed.

(Nawneet Kumar Pandey, J)

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