

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) No.15702 of 2013
(Through hybrid mode)**

M/s. Yash Pal Chopra and Co.

Petitioner

Mr. Ajit Kumar Hota, Advocate

-versus-

Union Bank of India and others

Opposite Parties

Mr. D.R. Mohapatra, CGC

CORAM: JUSTICE ARINDAM SINHA

**ORDER
04.05.2022**

**Order No.
05.**

1. Mr. Hota, learned advocate appears on behalf of petitioner and submits, impugned is order dated 23rd April, 2013, passed by the Executing Court, refusing to proceed with execution of award dated 17th February, 2010. The Court simply said that since appeal is pending and it is considered as continuation of original proceeding and stayed the execution. He submits, no terms were imposed for granting the stay. As such, there should be interference.

2. Mr. Mohapatra, learned advocate, Central Government Counsel appears on behalf of Union of India and submits, this day the appeal has been allowed and his client's challenge to the award, restored for adjudication. In the circumstances, there cannot be execution of the award, to prejudice his client regarding the challenge. He submits, impugned order is a good order. There should not be interference.

3. Rule 26 in order XXI, Code of Civil Procedure provides for when Court may stay execution. Sub-rule (3) mandates that before

making order to stay execution, the Court shall require such security from, or impose such condition upon judgment debtor as it thinks fit. Sub-rule (2) under rule 5 in order XLI also provides for stay by Court, which passed the decree. Sub-rule (3) requires, inter alia, security given for performance of the decree.

4. Clearly impugned order was made illegally in not carrying out the substantial mandates following procedure of execution, provided in the Code. As a consequence, impugned order is set aside and quashed. The executing Court is directed to proceed with the execution, unless prevented by order of stay of execution, either granted by it in accordance with law or presented with such an order made by the Court, wherein is pending the challenge petition made under section 34, Arbitration and Conciliation Act, 1996.

5. Regarding contention of opposite parties that their challenge has been restored, they may either seek stay of execution from the Court, in which the challenge is pending or from the executing Court.

6. The writ petition is disposed of.

(Arindam Sinha)
Judge

Sks