

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO.40 OF 2019

Basanti Barik & ors.

....

Petitioners

Mr.A.P.Bose, Adv.

-versus-

Purna Chandra Patra

....

Opposite Party(s)

Mr.D.Mohapatra, Adv.

**CORAM:
JUSTICE BISWANATH RATH**

ORDER

14.2.2022

**Order
No.**

6.

1. Heard learned counsel for the Parties.

2. This Petition involves a challenge to the refusal of stay by the Executing Court thereby refusing the request of the Defendants taking a plea to stay the execution proceeding on the premises of pendency of CMA No.33 of 2017 (T.S.No.489/1994-I) on an application under Order 9 Rule 13 of C.P.C.

3. Learned counsel for the Petitioners taking this Court to the Application filed for stay and the observation submitted that unless the execution proceeding remains stayed to see the final outcome in the proceeding under Order 9 Rule 13 of C.P.C., such proceeding will become infructuous and the Defendants thereby will be remediless.

4. Mr.D.Mohapatra, learned counsel for the O.P., however taking this Court to the disposal of the Suit of the year 1994 and the

execution proceeding being taken up after almost one and half decades, further taking to the age of the Plaintiff No.1 presently appears to be 85 years contended that there is sufficient delay in disposal of Order 9 Rule 13 of C.P.C. initiated in 2007 not even accompanying any delay condonation application inspite of a delayed attempt involved therein and pending since then.

5. It is considering the rival contentions of the Parties, this Court finds, for last two years, there is Corona havoc preventing judicial proceedings, further there is also resolution of the local Bars preventing the Courts from taking final proceedings in absence of consent of both side Counsel. Be that as it may, this Court cannot also lose sight of the age of Plaintiff No.1, who is already in her 85 years of age and the original suit being instituted in the year 1994, yet to see the finality. It is at this stage of the matter, this Court is of the opinion that in the event the execution proceeding is concluded, in the pendency of proceeding under Order 9 Rule 13 of C.P.C., nothing will remain involving the Order 9 Rule 13 of C.P.C. Application. Keeping this in view and also keeping in mind the misery faced by the Plaintiffs, this Court while interfering with the impugned order directs for expeditious disposal of CMA No.33 of 2017 pending before the Civil Judge (Sr.Divn.), Jaleswar. It is keeping this in view, this Court directs both the Parties to appear before the Civil Judge (Sr.Divn.), Jaleswar along with copy of this

order on 7.3.2022 and on their appearance and production of a copy of this order, the Civil Judge shall do well in fixing the hearing of the proceeding at least within fifteen days and the matter shall be disposed of within a further period of one month. This Court accordingly stays the execution proceeding for a period of at least three months. Any observation made herein above is for the purpose of disposal of CMA No.33 of 2017 and has nothing to do with either of the proceedings.

6. With the above direction, the CMP stands disposed of.

M.K.Rout

