

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.1659 of 2017

Sudhir Kumar Nayak

....

Petitioner(s)

Mr.K.M.H.Niamati,
Advocate

-versus-

Bishnu Maharana & Ors.

....

Opposite Party(s)

Mr.B.Baral, Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
09.05.2022**

Order No.
09

1. Heard learned counsel appearing for the parties.
2. Looking to the nature of dispute involved herein, this Court finds for the Hon'ble Supreme Court decision in the case of ***Rahul S Shah – Vrs.- Jitendra Kumar Gandhi & Ors, Civil Appeal Nos.1659-1660 of 2021***, the execution proceeding is to be closed within six months. For the observations there in the decision of the Hon'ble Supreme Court has also restricted the scope of entertaining any application in the continuation of execution proceeding.
3. Keeping in view of this decision and also looking to the nature of dispute involved, petitioner is interested to go with a fresh suit challenging the judgment and decree involved in the execution proceeding.
4. Considering the submission and taking the decision of the Hon'ble Apex Court, this Court finds there is no scope for entertaining the application under Anenxure-1 by the executing court. It is at this stage of the matter, learned counsel appearing for the petitioner seeks liberty not pressing the I.A. No. 8 of 2017 in order to avail the other remedy available. For this Court finds no scope for entertaining the Civil Miscellaneous Petition any further but, however disposes of the same

with liberty to the petitioner to file fresh suit which shall be decided in accordance with law and on its own merits.

(Biswanath Rath)
Judge

Sks

