

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) NO. 8409 OF 2022

Ananya Routray and another ***Petitioners***
Mr. Amiya Kumar Mohanty, Advocate

-versus-

Dr. Nihar Ranjan Ray ***Opp. Party***

Mr. Amit Prasad Bose, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

13.04.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition seek to assail the order dated 15th March, 2022 passed in Civil Execution No.01 of 2022 (arising out of C.P. No. 468 of 2021), whereby learned Judge, Family Court, Cuttack stayed further proceedings of Civil Execution No.1 of 2022 till 27th June, 2022.
 3. Mr. Mohanty, learned counsel for the Petitioners relying upon the decision of the Hon'ble Supreme Court in the case of ***Pratima Devi and another –v- Anand Prakash*** in Criminal No.1399 of 2019 (arising out of SLP (Crl.) No. 7203 of 2019) submits that proceedings in an execution case at no circumstance should be stayed. Learned Judge, Family Court, Cuttack only taking into consideration that the order of maintenance passed on 15th December, 2021 in I.A. No. 52 of 2021 (arising out of C.P. No. 468 of 2021) is under challenge by both the parties in W.P.(C) No.41413 of 2021 and W.P.(C) No. 3864 of 2022, has passed the impugned order. It is his submission that no opportunity whatsoever

was given to the Petitioners to put-forth their case and to bring the order passed in *Pratima Devi* (supra) to the notice of the Family Court. Had the Petitioners been given opportunity, they would have objected to the order impugned herein. He, therefore, prays for setting aside the impugned order.

4. Mr. Bose, learned counsel submits that although he has instruction to appear on behalf of Opposite Party, but he is not in a position to file Vakalatnama as the Opposite Party is out of the State of Odisha. He, however, submits that the Petitioners were given ample opportunity to file their show cause to the petition for stay of the execution proceeding and in fact, the Petitioners through their counsel had participated in the hearing of the petition for stay. Since both the writ petitions (W.P.(C) No. 41413 of 2021 and W.P.(C) No.3864 of 2022) are posted to 5th May, 2022, on consent of learned counsel for the parties, for production of salary certificate of Opposite Party, the execution proceeding should not continue at least till that date.

5. Mr. Mohanty, learned counsel for the Petitioners vehemently objected to the same and drawing attention of this Court to Para-8 of the writ petition submits that C.P.(Execution) No.01 of 2022 was posted on 15th March, 2022 before the Family Court for payment of interim maintenance and study expenses etc. by the Opposite Party. At about 2.15 P.M. learned counsel for the Petitioners was offered a copy of the petition said to have been filed by the Opposite Party. Learned counsel appearing for the Petitioners before the Family Court accepted the same with objection and prayed for an adjournment to file objection. But, learned Judge, Family Court, Cuttack kept the petition for delivery of orders and thereafter, the impugned order has been passed.

6. Taking into consideration the fact that Mr. Bose, learned counsel is appearing in other two writ petitions, this Court in order to save time directed learned counsel for the Petitioners to serve a copy of the writ petition on Mr. Bose, learned counsel.

7. In view of the submission made by Mr. Bose, learned counsel for the Opposite Party that although he has instruction to appear, but he could not file Vakalatnama in this case as the Opposite Party is out of the State of Odisha, this Court feels that the matter will be further lingering, if filing of Vakalatnama on behalf of Opposite Party is awaited.

8. It is submitted by Mr. Mohanty, learned counsel that the Petitioners were not given opportunity of hearing in the petition for stay of further proceeding in civil execution case filed by the Opposite Party.

9. In that view of the matter, this Court feels that the Petitioners should be given an opportunity to file a petition for recall of the order dated 15th March, 2022 before learned Judge, Family Court, Cuttack. In the event such an application is filed serving copy thereof on the Opposite Party or his counsel before learned Judge, Family Court, Cuttack, the same shall be considered in accordance with law giving opportunity of hearing to the parties concerned.

10. With the aforesaid observation, this writ petition is disposed of.

11. The case records of W.P.(C) No. 41413 of 2021 and W.P.(C) No. 3864 of 2022 be delinked from this file and be placed on the date fixed.

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge