

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.396 of 2022

Sashanka Sekhar Pattnayak

....

Petitioner(s)

Mr. S.R. Patnaik,
Advocate

-versus-

Dillip Kumar Khuntia & Ors.

....

Opposite Parties

Mr. B.B. Mishra,
Advocate

**CORAM:
JUSTICE BISWANATH RATH**

**ORDER
09.05.2022**

Order No.

01. 1. This matter is taken up through Hybrid Arrangement (Virtual/Physical mode).
2. The controversy involved in this matter is; while entertaining the request on behalf of the present Petitioner the lower court entertaining the application involved directed for issuing notice fixing the dispute to be decided basing on the S.R. & P.A. on 18.05.2022. It is thus contended that while doing so, there should not have been order passing delivery of possession in executing the judgment involved therein.
3. Drawing the attention of this Court to both the orders dated 4.05.2022 at page 56 at Annexure-6 and the order coming in way of undertaking exercise dated 4.05.2022 at page 55 Mr. Patanaik,

learned counsel for the Petitioner contended that in the event the earlier order dated 4.05.2022 is given effect to, nothing will be there in adjudicating the issue undertaken vide subsequent order dated 4.05.2022.

4. There is already appearance on behalf of the decree holder through Mr. B.B. Mishra, learned counsel.

5. Mr. Mishra, learned counsel, however, though disputed to the undertaking of exercise vide order dated 4.05.2022 on the premises that there has already been finality to such issue, but did not dispute to the fact that vide order dated 4.05.2022 at page 56 the trial court has kept the dispute raised by the Petitioner pending to be decided on the next date. For the opinion of this Court, looking to the objection it is for the trial court to take a decision and not for this Court at this moment. Keeping in view both the orders, this Court is of the view that in the event the order dated 4.05.2022 directing for arrangement for delivery of possession is operated, there will be no scope for considering the issue involved in the second order dated 4.05.2022.

6. In the above circumstance, this Court while directing for stay of implementation of the order dated 4.05.2022 in Execution case No.16/73 particularly directing for arrangement of delivery of possession, for a period of four weeks, also directs the Senior Civil Judge, 2nd Court, Cuttack to finalize the dispute vide C.M.A No.77 of 1973 involving Execution Case No.16/73 within such period. If there intervenes “Summer Vacation”, then the stay granted here shall operate for eight weeks and within which period there shall be

decision on the issue involving the subsequent order dated 4.05.2022.

7. Both the parties are directed to appear before the learned Senior Civil Judge, 2nd Court, Cuttack along with this order on 12th May, 2022.

8. The C.M.P. stands disposed of with the above direction.

(Biswanath Rath)
Judge

Ayaskanta Jena

