

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.446 of 2022

O.S.F.C, Cuttack & Anr.

....

Petitioner(s)

Mr. A. Routray,
Advocate

-versus-

Radha Mohan Mohanta

....

Opposite Party(s)

CORAM:

JUSTICE BISWANATH RATH

ORDER

19.05.2022

Order No.

01.

1. It is submitted by Mr. Routray, learned counsel for the Petitioners that on entertainment of the R.F.A. No.90 of 2011, a Division Bench of this Court in disposal of the Misc. Case No.350 of 2012, granted stay of further proceeding in the Execution Case No.18 of 2011 pending in the Court of learned Civil Judge (Sr. Divn.), Baripada till disposal of the R.F.A. but however, subject to the condition that the Petitioner will deposit a sum of Rs.20,00,000/- (Rupees twenty lakhs) only within two weeks. It is also contended that in modification of above order, the Division Bench enhanced the amount required to be deposited to Rs.25,00,000/- (Rupees Twenty-five lakhs) only and there was also consequential increase in the time for deposit. It is alleged that in spite of such order being passed and even after deposit of the amount as directed by the High Court through disposal of the above noted Misc. Case in time, the Executing Court recommenced the Execution Proceeding in spite of continuance of stay order therein. Mr. Routray, learned counsel for

the Petitioners claims, unless the Execution Proceeding remains stayed, the Regular First Appeal will become infructuous.

2. Considering the submission of Mr. Routrary, learned counsel for the Petitioner and from reading of the pleadings this Court finds, the Division Bench of this Court in disposal of the Misc. Case No.350 of 2011 has passed the following :-

“ **R.F.A No.90 of 2011**
Misc. Case No.350 of 2012

Heard learned counsel for the parties.

Considering the submissions made and the nature of the decree, which is under execution, we direct that if the Petitioner deposits a sum of Rs.20.00 lakhs (Rupees Twenty Lakhs) within two weeks hence before the Court, which on being deposited shall be kept in a term deposit for a period of five years in a Nationalized Bank renewable automatically by the Registrar of the Civil Courts, further proceedings in Execution Case No.18 of 2011 pending in the Court of the learned Civil Judge (Senior Division), Baripada shall remain stayed till disposal of the R.F.A.

It is needless to mention that if the said deposit is not made within the time stipulated, the Execution Case shall proceed.

The Misc. Case is accordingly disposed of.

Urgent certified copy of this order be granted as per rules.”

3. It appears, after disposal of the aforesaid misc. case the Petitioners also attempted to modify the order dated 1.02.2013 by filing Misc. Case No.53 of 2013, which application again got disposed on 07.02.2013 with the following order:-

“ **Misc. Case No.53 of 2013**

07.02.2013.

This is an application for modification of the order dated 01.02.2013 passed in Misc. Case No.350 of 2012. It is asserted in the application that instead of Rs.25.00 lakhs,

it has been wrongly typed as Rs.20.00 lakhs in the order dated 01.02.2013.

Considering the submission made and realizing that in fact Rs.25.00 lakhs was directed to be deposited by the petitioner, the amount inadvertently typed as Rs.20.00 lakhs be corrected as Rs.25.00 lakhs. The time granted to deposit the said amount in the order dated 01.02.2013 is extended by further one week.

With the aforesaid modification, the Misc. Case is disposed of.”

4. Further record shows, the Petitioner- the JDR on 19.02.2013 had already deposited a sum of Rs.25,00,000/- (rupees twenty-five lakhs) only as directed by the High Court. In the process, this Court observes, once the Petitioners have complied with the direction of this Court in the grant of the stay of further proceeding in Execution Case No.18 of 2011 till disposal of the R.F.A. and though the R.F.A. is transferred in the meantime to the District Court, proceeding vide the Execution Case No.18 of 2011 has to wait till final outcome in R.F.A. No.90 of 2011.

Considering the above and taking cognizance of the allegation made by the learned counsel for Petitioners-the JDR that in spite of deposit of the amount as directed by the Division Bench of this Court and in spite of continuance of the order of stay granted by the High Court, the trial court has illegally proceeded with the Execution Proceeding, this Court finds, recommencement of the proceeding vide Execution Case No.18 of 2011 is illegal. Undisputedly appeal is still pending with the District Judge, Baripada. In the process, this Court in disposal of the C.M.P permits the Petitioners to file a memo along with a copy of this order, the orders earlier passed by the Division Bench and also proof of deposit of the amount as directed by the Division Bench of this Court,

before the Executing Court within a period of seven days and on filing of the memo with documents indicated above, the Executing Court shall stay its hand in further proceeding to dispose of the Execution Case No.18 of 2011. Further keeping in view that the first appeal is pending since 2011, this Court directs the District Judge, Baripada to make an attempt to dispose of the appeal within a period of nine months from the date of communication of an authenticated copy of this order by the Petitioners.

Ayaskanta Jena

