

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP NO. 531 OF 2022

Dharanidhar Rout

Petitioner

Mr. Rama Chandra Mohanty,
Advocate

-versus-

Juli Das and others

.... Opp. Parties

Mr. Ramakanta Mohanty,
Senior Advocate
along with Mr. Debakanta Mohanty,
Advocate for Opposite Party No.4

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
27.06.2022**

Order No.

**CMP NO. 531 OF 2022
& CMP NO. 532 OF 2022**

2.
 1. This matter is taken up through hybrid mode.
 2. CMP No. 531 of 2022 has been filed assailing the order dated 16th April, 2022 (Annexure-1) passed by learned 5th Additional District Judge, Bhubaneswar in CMA No. 13 of 2020 (arising out of RFA No. 86 of 2018) by which learned appellate court directed to delete the name of proforma Respondents from the cause title of CMA No. 13 of 2020.
 3. CMP No. 532 of 2020 has been filed assailing the order dated 16th May, 2022 (Annexure-1) passed by learned 5th Additional District Judge, Bhubaneswar in CMA No. 13 of 2020 (arising out of RFA No., 86 of 2018), whereby he directed for stay of Execution Case No. 34 of 2019 (arising out of C.S. No. 790 of 2007) till disposal of the appeal on merit.

4. Mr. Mohanty, learned counsel for the Petitioner submits that C.S. No. 790 of 2007 filed by the Petitioner for specific performance of contract was decreed in his favour. Assailing the judgment and decree, the Defendant-Opposite Party No.4 preferred RFA No. 86 of 2018, which is sub-judice before learned 5th Additional District Judge, Bhubaneswar. Due to non-prosecution, the appeal was dismissed for default on 15th February, 2020 and is yet to be restored. Opposite Party No.4 filed CMA No. 13 of 2020 for restoration of the appeal, which is pending for consideration for restoration of appeal. During pendency of the CMA, the Defendant-Appellant No.2 filed an application for stay of further proceeding in Execution Case No. 34 of 2019 as at Annexure-5. After hearing both the parties, learned appellate court passed the impugned order directing stay of the execution proceeding till disposal of the appeal on merit. The Petitioner being aggrieved by the said order has filed CMP No. 532 of 2022.

5. Likewise, order dated 16th April, 2022 has been passed directing to delete the name of proforma Respondents from the cause title of the CMA. It is his submission that when the appeal has not been restored to file, deletion of the name of proforma Respondents from the cause title is not sustainable. But, on perusal of impugned order, it gives an impression that direction has been made to delete the name of proforma respondents from the cause title of the appeal memo. Hence, assailing the same, CMP No. 531 of 2022 has been filed.

6. In course of hearing, Mr. Mohanty, learned Senior Advocate appearing for the contesting Opposite Party No.4 fairly concedes that learned appellate court could not have stayed further proceedings of the execution case till disposal of the appeal on merit since the same has not yet been restored. A direction should have been made to stay the execution proceeding till disposal of the application for restoration of the appeal i.e. CMA No. 13 of 2020. He further submits that since there is no appeal in the eyes of law as it has been dismissed for default, learned appellate court considering the same passed order deleting the names of proforma Respondents from the cause title of the CMA only.

7. Mr. Mohanty, learned counsel for the Petitioner also accepts the same.

8. In that view of the matter, the order impugned in CMP No.532 of 2022 is modified to the extent that there shall be stay of further proceedings in Execution Case No. 34 of 2019 till disposal of CMA No. 13 of 2020 pending before learned 5th Additional District Judge, Bhubaneswar. The order impugned in CMP No.531 of 2022 is clarified to the extent that direction for deletion of the names of proforma Respondents is confined to CMA No. 13 of 2020 only.

9. Both the CMPs are accordingly disposed of.

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

(K.R. Mohapatra)
Judge