

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 10303 OF 2017

Ramabati Routray and others

Petitioners

Mr. Sidharth Mishra, Advocate

-versus-

Ranjan Kumar Routray and another

.... Opp. Parties

Mr. Niranjan Sahoo, Advocate
(For Opp. Party No.1)

Mr. Biswaranjan Mohanty,
(For Opp. Party No.2)

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

**ORDER
16.05.2022**

Order No.

6.
 1. This matter is taken up through hybrid mode.
 2. The Petitioners in this writ petition seek to assail the order dated 20th May, 2017 (Annexure-2) passed in C.M.A. No.65 of 2017 (arising out of Execution Case No.32 of 2015), whereby learned Judge, Family Court, Bhubaneswar rejected the petition filed by them under Order XXI Rule 59(b) C.P.C.
 3. Mr. Mishra, learned counsel for the Petitioners submits that since the enquiry with regard to attachment of the property has not yet been completed, the order of sale should be stayed. It is his submission that the Petitioners are residing in the said house. If their residential house is put to sale, they will be homeless. In that view of the matter, the order of sale should be stayed till the inquiry with regard to attachment of the property is complete.
 4. Mr. Mohanty, learned counsel appearing for Opposite Party No.2-Wife submits that the order of sale has been made only

after the inquiry with regard to the attachment is over. A petition under Order XXI Rule 59(b) of C.P.C. will only be maintainable after an advertisement for sale is made. Since no advertisement for sale of property under attachment is made as yet, the application under Order XXI Rule 59(b) of C.P.C. is premature. Thus, learned Judge, Family Court, Bhubaneswar has committed no error in rejecting such application.

5. Mr. Sahoo, learned counsel for the Opposite Party No.1 submits that he has no means to comply with the direction made by learned Judge, Family Court, Bhubaneswar, which is put to execution in Execution Case No.32 of 2015.

6. Taking into consideration the submissions made by learned counsel for the parties and on perusal of the record, it appears that due to non-payment of the dues as directed by learned Judge, Family Court, Bhubaneswar, Execution Case No.32 of 2015 has been initiated. In due course, the immovable property of the Opposite Party No.1 was attached. Subsequently, the order of sale has been made. At that juncture, the Petitioners filed an application under Order XXI Rule 59(b) of C.P.C. for stay of sale. Order XXI Rule 59(b) C.P.C. reads as follows:

“59. Stay of sale.—Where before the claim was preferred or the objection was made, the property attached had already been advertised for sale, the Court may—

(a) if the property is movable, make an order postponing the sale pending the adjudication of the claim or objection, or

(b) if the property is immovable, make an order that, pending the adjudication of the claim or objection, the property shall not be sold, or that pending such adjudication, the property may be sold but the sale shall not be confirmed,

and any such order may be made subject to such terms and conditions as to security or otherwise as the Court thinks fit.”

On a close reading of the provisions, it is apparent that an application for sale of stay will be maintainable only after the property attached is advertised for sale. Since no advertisement for sale of the immovable property has yet been made, an application under Order XXI Rule 59(b) of C.P.C. is premature.

7. In that view of the matter, I am not inclined to interfere with the impugned order in refusing to stay of sale of the immovable property at this stage.

8. Accordingly, this writ petition is dismissed.

9. It is made clear that dismissal of this writ petition shall not preclude the Petitioners from making appropriate application in the execution proceeding, when the cause of action arises.

10. The interim order dated 7th June, 2017 passed in Misc. Case No.9395 of 2017 stands vacated.

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

(K.R. Mohapatra)
Judge