

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 793 OF 2022

Shyam Sundar Mohanty ***Petitioner***

Mr. Brahmananda Tripathy, Advocate
-versus-

Kamení Dalei ***Opp. Party***
Mr. Maneswar Mohanty, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
02.09.2022

Order No.

2.
 1. This matter is taken up through hybrid mode.
 2. The Petitioner in this CMP seeks to assail the order dated 26th July, 2022 (Annexure-3) passed by learned 5th Additional District Judge, Bhubaneswar in R.F.A. No.29 of 2019, whereby he dismissed an application for stay of the judgment and decree impugned in the appeal, being devoid of any merit.
 3. On perusal of the record, it appears that vide order dated 16th January, 2020, learned Civil Judge (Junior Division), Bhubaneswar in Execution Case No.18 of 2019 entertaining an application filed by the present Petitioner has directed that there shall not be any forcible eviction in respect of the suit land.
 4. It is submitted by Mr. Tripathy, learned counsel for the Petitioner that the decree, which is under challenge in R.F.A. No.29 of 2019, is for eviction of the present Petitioner.
 5. Mr. Mohanty, learned counsel for the Opposite Party submits that since the executing Court has already passed an order in favour of the Petitioner protecting his possession over the suit land during pendency of the appeal, the petition for stay

of judgment and decree impugned in the appeal is a misconceived one.

6. In the facts and circumstances of the case and upon hearing learned counsel for the parties, this Court is of the considered opinion that since forcible eviction of the Petitioner has already been stayed by the executing Court vide order dated 16th January, 2020 in Execution Case No.18 of 2019, no further petition for stay of judgment and decree is required to be considered in R.F.A. No.29 of 2019. Hence, I am not inclined to entertain the CMP.

7. Accordingly, the CMP is disposed of with the aforesaid observation.

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

(K.R. Mohapatra)
Judge