

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CMP No. 800 OF 2022**

***Sharath Kumar A.N.*** ..... ***Petitioner***  
Mr. Deepak Ranjan Sundaray, Advocate

-versus-

***M/s. S.K. Traders and another*** ..... ***Opp. Parties***

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

**Order No.**

**ORDER**  
**15.09.2022**

01.      1.      This matter is taken up through hybrid mode.
2.      The Petitioner in this CMP seeks to assail the notice dated 10<sup>th</sup> August, 2022 (Annexure-7 series) issued by learned Additional Civil Judge (Senior Division), Bolangir in Execution Case No.03 of 2020.
3.      Mr. Sundaray, learned counsel submits that although the Petitioner has responded to the notice under Order XXI Rule 54 C.P.C. by filing objection under Order XXI Rule 58 C.P.C., learned Executing Court without considering the same is proceeding for attachment of the property. The Petitioner had earlier approached this Court in CMP No.324 of 2022 for stay of further proceedings of the execution case on the plea that a petition under Order IX Rule 13 C.P.C. is pending for consideration. The said CMP was disposed of on 29<sup>th</sup> April, 2022 with the following order:

*“2.      Considering a serious contingency faced by  
the Petitioner, even though this Court finds no*

*infirmity in the impugned order as the Executing Courts are under constraint of Hon'ble apex Court's direction required to be disposed of the execution proceeding within certain time frame but, however, for the Petitioner having scope of revival of the suit, in the event he succeeds in his Order 9 Rule 13 attempt, this Court while staying the execution proceeding for a period of eight weeks, directs the learned Civil Judge (Senior Division), Bolangir to dispose of the I.A. No.19 of 2020 at least within a period of four weeks from the date of communication of a copy of this order. this is, however, considering that the decree holder is prevented from the enjoyment of decree, this Court directs the Petitioner-judgment debtor to deposit at least a sum of Rs.2,00,000/- (rupees two lakh) only before the Executing Court within a period of one week hence. In the event the Petitioner deposits the aforesaid amount within time, the same shall be kept in a fixed deposit scheme in any Nationalized Bank for the benefit of the parties, at least finality of the lis.*

3. *The C.M.P. stands disposed of with the above direction."*

4. It is submitted by Mr. Sundaray, learned counsel for the Petitioner that due to financial crunch, the Petitioner could not comply with the said direction of this Court. But, subsequently, when he offered the amount as directed by this Court in earlier CMP, learned executing Court without accepting the same proceeded with the matter. It is his submission that when the objection under Order XXI Rule 58 C.P.C. is pending for consideration, learned executing Court should not have proceeded for attachment without taking a decision on the same. Hence, he prays for setting aside the notice under Annexure-7 series.

5. Upon hearing learned counsel for the Petitioner and on perusal of the record, it appears that the Petitioner is leaving no stone unturned to stall the execution proceeding. The Petitioner being the judgment debtor is trying to stall execution proceeding and prevent the decree holder from enjoying the fruit of the decree. Since the Petitioner did not comply with the direction of this Court in CMP No.324 of 2022 by depositing Rs.2,00,000/- within a period of one week from the date of the said order, learned Executing Court has no other option than to proceed with the execution case. Notice under Order XXI Rule 54 C.P.C. is a consequence of the same. The Petitioner in this CMP does not also challenge any order passed by learned Executing Court. He only assails the legality of the notice issued under Annexure-7 series under Order XXI Rule 54 C.P.C., which he stated to have responded by filing objection.

6. In view of the above, this Court is of the considered opinion that learned Executing Court has committed no error in proceeding with the execution case in compliance of the direction of this Court.

7. Accordingly, the CMP being devoid of any merit stands dismissed.

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

**(K.R. Mohapatra)**  
**Judge**