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IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.852 of 2022

Vice-Chancellor, Maharaja Sriram Petitioners
Chandra Bhanja Deo University and
another

Mr. Sanjeev Udgata, Advocate

-versus-

Saibani Giri and others Opp. Parties

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
27.09.2022

Order No.

5. 1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek to assail the order dated 3rd August, 2022 passed by learned Senior Civil Judge, Baripada in Execution Case No.13 of 2018, whereby it proceeded with the execution proceeding relying upon the ratio decided in the case of *Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation*, reported in (2018) 16 SCC 299 in spite of the interim order passed by this Court on 2nd November, 2021 in IA No.10826 of 2021 (arising out of W.P.(C) No.23443 of 2021).
3. Mr. Udgagata, learned counsel for the Petitioners submits that assailing the award passed by learned Labour Court, Bhubaneswar in ID Case No.1 of 2017, the Petitioner has preferred W.P.(C) No.23443 of 2021, wherein, this Court, vide order dated 2nd November, 2021, passed the following order:-

“W.P.(C) No.23443 of 2021

And

IA No.10826 of 2021

- 1. This matter is taken up through hybrid mode.*
- 2. Head.*
- 3. Issue notice to Opposite Party Nos.1(a) to 1(d) and 2 by Registered Post with A.D. Requisites shall be filed by Friday (05.11.2021), as undertaken.*
- 4. List this matter after service of return from the Opposite Parties.*
- 5. As an interim measure, it is directed that, there shall be interim stay of operation of the impugned award vide Annexure-1, till the next date.”*

In time meantime, the Workmen-DHrs. filed Execution Case No.13 of 2018. After expiry of six months from the date of the interim order, as aforesaid, the DHrs. filed an application to vacate the interim order passed by this Court and to proceed with the execution case. Learned executing Court relying upon paragraphs-35 and 36 of ***Asian Resurfacing of Road Agency Ltd. (supra)*** proceeded with the execution case stating that in the meantime six months has already lapsed and no further extension of interim order of stay has been made by this Court.

4. Mr. Udadata, learned counsel for the Petitioner relying upon para-36 of ***Asian Resurfacing of Road Agency Ltd. (supra)*** submits that the ratio is applicable to civil and criminal trials only and not to an execution proceeding, because no trial is undertaken in an execution proceeding. It is his submission that the said order has been clarified by the Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation***, reported in 2022 SCC Online SC 1014, wherein

taking note of paragraph 36 of the case law (supra), it is held as under:-

“We are afraid that the attempt of the applicant to draw inspiration from the above directions as referred to above cannot succeed in view that this Court cannot be understood as having intended to apply the principle to the fact situation which is presented in this case. Accordingly, the miscellaneous application for clarification is disposed of by clarifying that the order of stay granted by the Division Bench in the High Court cannot be treated as having no force. However, we leave it open to the applicant to seek early disposal of the case.”

It is his submission that in the said case, a clarification was sought for with regard to an interim order passed by the Division Bench of the High Court on 6th May, 2015. It is his submission that since there is no trial conducted in an execution proceeding, the aforesaid ratio is not applicable in the instant case. He, therefore prays for setting aside the impugned order and issue direction to the executing Court to stay further proceeding of Execution case No.13 of 2018 pending before it till the interim order passed in W.P.(C) No.23443 of 2021 is either vacated or varied.

5. Upon hearing learned counsel for the Petitioner and on perusal of record and the case law, as well cited by learned counsel for the Petitioner, it is clear that in para-36 of ***Asian Resurfacing of Road Agency Ltd. (supra)***, Hon'ble Supreme Court held that the principle decided therein is applicable to civil and criminal trials. There are provisions under the Code of Civil Procedure, 1908 to receive evidence and decide rights of the parties in an execution proceeding like a suit, i.e., in an application under Section 47 and Order XXI Rule 97 of CPC

etc. Thus, it cannot be denied that in execution proceeding no trial is being conducted. Hon'ble Supreme Court has passed the order keeping in mind that in view of order of stay granted by higher forum civil and criminal trials should not be stayed for indefinite period. The same analogy is also applicable to an execution case. Further, in the case of ***Rahul S. Shah Vs. Jinendra Kumar Gandhi and others***, reported in (2021) 6 SCC 418, Hon'ble Supreme Court, while putting stress upon disposal of execution case at the earliest, held as under:-

“42.12. The executing court must dispose of the execution proceedings within six months from the date of filing, which may be extended only by recording reasons in writing for such delay.”

5.1 In that view of the matter, I am of the considered view that the ratio decided in ***Asian Resurfacing of Road Agency Ltd. (supra)*** is squarely applicable to an execution proceeding pending before any Civil Court.

6. It is submitted by Mr. Udgata, learned counsel that the interim order dated 2nd November, 2021 passed in W.P.(C) No.23443 of 2021 is till next date and the writ petition has not been listed thereafter. Thus, the interim order is continuing till the date. It is also submitted by Mr. Udgata, learned counsel that neither any application under Section 47 nor under Order XXI Rule 97 CPC is pending for adjudication. Hence, occasion of any trial in the execution proceeding does not arise at all. This Court is not in a position to accept the submission of Mr. Udgata, learned counsel for the Petitioner, in view of the fact that only because no application under Section 47 or Order XXI Rule 97 is pending, it cannot be said that the ratio in ***Asian Resurfacing of Road Agency Ltd. (supra)*** is not applicable to

execution proceeding, as the said ratio is equally applicable to a stage of the suit or proceeding, where neither any trial is continuing nor has commenced.

7. In view of the above, I do not find any infirmity in the impugned order and hence the CMP is dismissed being devoid of any merit.

(K.R. Mohapatra)
Judge



s.s.satapathy