

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1046 of 2022

Gurjeet Singh and others

Petitioners

Mr. Avijit Patnaik, Advocate

-versus-

Kamal Dev Sharma and others

.... Opp. Parties

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

**ORDER
26.10.2022**

Order No.

1. This matter is taken up through hybrid mode.
2. Petitioners in this CMP seek for a direction to drop the Execution Case No.138 of 2021 arising out of judgment and decree passed by learned Civil Judge (Senior Division), Champua in CS No.56 of 2009.
3. Mr. Patnaik, learned counsel for the Petitioners submits that CS No.56 of 2009 was filed against the present Petitioners for a decree of recovery of money along with interest and compensation. The suit was decreed by learned trial Court on 3rd September, 2016 directing the Petitioners to refund Rs.12,68,00,000/- along with interest and damages etc. The decree was subsequently transferred to the Court of Civil Judge (Senior Division), Mohali and is pending in Execution Case No.138 of 2021. As the suit was decreed ex-parte, Petitioners have already filed CMA No.164 of 2021 under Order IX Rule 13 CPC for setting aside the ex-parte decree, which is pending for adjudication. Relying upon the decision in the case of ***Rajkishore Das Vs. Nilamani Das***, reported in AIR 1968 Ori.

140, Mr. Patnaik, learned counsel for the Petitioners submits that transferee Court has no jurisdiction to entertain any application except executing the decree. He verily relied on para-18 of said judgment in ***Rajkishore Das (supra)***, which reads thus:-

“18. The decisions cited by the plaintiff-petitioner deal with limitation of the power of the executing Court to go behind the decree, while executing it and clearly enunciate that the validity of the decree cannot be challenged though its execution can be refused on the ground that it is null and void and its terms can be construed but not considered on its merits. There is no dispute about the correctness of these principles enunciated in those decisions which are of the Supreme Court as well as of other High Courts in India. None of those decisions, however, says that merely because it is executing the decree, the Court loses its jurisdiction to entertain an application under Order 9, Rule 13 C. P. C. which is specially conferred on it as the Court in which the decree was passed. If the executing court was a transferee court, it would, by statutory provision, have the jurisdiction only to execute the decree, but it would not acquire the entire jurisdiction of the Court which passed the decree. That would be because the transferee court will not be the court which passed the decree within the meaning of Section 37, CPC. In the instant case the Subordinate Judge while entertaining the application under Order 9, Rule 13 was discharging its function within the limits of its jurisdiction as the Court which passed the decree. Therefore, I see no considerable legal impediment to hold that the Court can treat an application under Section 47, as one under Order 9 Rule 13 and dispose it of on that footing.”

He, therefore, submits that Petitioners are at present remediless to stay execution of the decree during pendency of the petition under Order IX Rule 13 CPC. It is his submission that application under Order IX Rule 13 CPC can also be treated as a petition under Section 47 CPC and the executing Court has jurisdiction to entertain the same and pass orders thereon. Mr. Patnaik, learned counsel for the Petitioners also submits that the Petitioners have already brought to the notice of the executing

Court about pendency of the petition under Order IX Rule 13 CPC. Thus, finding no other alternative, Petitioners have filed this CMP with the aforesaid prayer.

4. Upon hearing learned counsel for the Petitioners and on perusal of case record as well as case law cited, it is apparent that the Petitioners have never approached the executing Court to stay the execution proceeding for a particular period to obtain an interim order to protect their interest. Order XLI Rule 26 (1) CPC takes care of the interest of the Petitioners. Since the Petitioners have not filed any application for stay of the execution proceeding stating the facts, as aforesaid, this Court is not inclined to entertain the same in exercise of power under Article 227 of the Constitution. Further, no ground is made out to drop the Execution Proceeding No.138 of 2021 in this CMP. The case law cited by learned counsel for the Petitioners clearly stipulates that there is no legal impediment to treat an application under Section 47 CPC as one under Order IX Rule 13 CPC. Thus, the same is not applicable to the case at hand. Therefore, this Court is not inclined to entertain the prayer made in the CMP.

5. Accordingly, the CMP being devoid of any merit, stands dismissed. However, it is open to the Petitioners to work out their remedy in accordance with law.

(K.R. Mohapatra)
Judge