

A.F.R

IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.652 of 2021

***M/s. Utkal Co-operative Banking
Society Ltd.***

....

Petitioner(s)

Mr. D. Mohapatra,
Advocate

-versus-

Rabindra Kumar Nayak & Ors.

....

Opposite Party(s)

Mr. M.M. Patnaik,
Advocate for O.Ps.1 to 4 & 6
Mr. D.P. Mohanty,
Advocate for O.P.5

**CORAM:
JUSTICE BISWANATH RATH**

**JUDGMENT
06.05.2022**

Order No.

16.

1. This C.M.P. involves a challenge to the order passed by the Executing Court at Annexure-5.

2. Undisputed fact remains; a civil suit was brought by at least six Plaintiffs. The suit was decided on contest with the following direction :-

“That the suit is decreed on contest against the defendant, but in the circumstances without costs. The defendant is directed to reinstate the plaintiffs and to pay back wages, until plaintiffs are removed from services in due process of law.”

3. Undisputedly there has been subsequent challenge to this judgment & decree, but decree remains final. For the submission of both sides and looking to the order quoted hereinabove, it appears, on

the premises of not working out of the judgment and decree by the judgment debtor an execution proceeding was initiated and this execution proceeding got registered as Execution Case No.13 of 1999. On receipt of notice the judgment debtor appeared in the Execution Proceeding and filed its objection to the claim made in the Execution proceeding in sum and substance answering thereby that the decree holders in the worse entitled to back wages at least till the date of judgment and decree. Particularly keeping in view that the plaintiffs did not submit their joining presumably each of the plaintiffs working elsewhere and in receipt of more. There is of course controversy between the parties on the joining and/or refusal to join. The decree holder made an allegation that in spite of their attempt in the matter of joining back, the establishment is not allowing them to join and on the other hand there is objection to such claim of the decree holder by the judgment debtor in making a statement that there has been no attempt of joining back, however the judgment debtor did not dispute to the entitlement of the decree holders falling through the judgment involved. The judgment debtor, however, objected the claim of the decree holder on their claim on joining back on the premises that there is in fact no return of a single plaintiff submitting their joining report.

Hearing the execution proceeding the Executing Court i.e. the Civil Judge (Sr. Divn.), Bhubaneswar in disposal of the Execution Case No.13 of 1999 recording the rival contentions of the parties came to observe that in the pendency of the Execution Proceeding there appears, there has been certain development in consideration of an application U/s.47 of the C.P.C. There has also been bringing in the further statement of claim raising and/or brining future claims. Finally the calculation made by the decree holders dated 25.08.2014 was taken up in execution and the Executing Court appears to have disposed of

the execution proceeding almost accepting the claims made finally in the calculation sheet dated 25.08.2014 finally and recovery of amount was directed to be made as per the calculation made on 25.08.2014. Finally considering that there is sufficient amount under attachment the matter was posted to 11.11.2021 for releasing the dues from the attached amount in favour of the decree holder and for further orders.

4. The C.M.P. is filed assailing such order.

5. The matter was taken up for admission along with the I.A. This Court finds, a single Bench of this Court in entertaining the C.M.P. while issuing notice passed interim direction staying operation of the impugned order at Annexure-11.

6. Challenging the impugned order Mr. Mohapatra, learned counsel for the Petitioners taking this Court to the nature of the suit, the relief claimed therein and the order passed in disposal of the suit vide judgment at Annexure-1 on contest of the parties, while submitting that there may not be any confusion in the direction of the trial court, but however, looking to the developments taken place in the meantime, contended that since the entitlement flowing from the outcome of the suit is up to the date of passing of such judgment, the decree holders are maximum entitled to the amount falling due so far it relates to the back wages as on date of judgment and/or decree.

It is, in the above circumstance, Mr. Mohapatra, learned counsel for the Petitioners opposed the action of the Executing Court involved herein in entertaining the disputed claim and extending the benefit of back wages dragging it up to passing of final order in the Execution Proceeding and thus contended that the Executing Court has exceeded its jurisdiction and passed order beyond the scope in the judgment involved herein. Mr. Mohapatra, learned counsel thus prayed

this Court for interfering in the order passed by the Executing Court so far as Annexure-11 is concerned.

7. Mr. Mohanty, learned counsel for the Opposite Party No.5 one of the decree holders even though did not dispute to the nature of the suit, the claim involved therein and the direction in the suit as available at page 40 of the brief, however on the premises of the pleadings in the execution proceeding by the decree holders that after the judgment and decree involved the judgment debtor refused to allow the decree holders to continue in service, as such they are to be paid with their entitlements at least till the date of disposal of the execution proceeding, Mr. Mohanty, learned counsel for the Opposite Party No.5 thus contended that there is no infirmity in the order passed by the Executing Court requiring to be interfered with.

7. Mr. Patnaik, learned counsel for the Opposite Party Nos.1 to 4 & 6 in his opposition simply adopted the stand taken by Mr. Mohanty, learned counsel for the Opposite Party No.5 and attempted to justify the impugned order.

8. Keeping in view the legal proposition involved here, if the Executing Court granting relief beyond scope of suit and judgment is justified? This Court here takes stock of legal position in this situation, which runs as follows:-

In the case between *Biswanath alias Bisu Naik V. Srimati Uttara Bewa & Ors.* as reported in 62(1986) C.L.T.112, again taking two of the Hon'ble apex Court's decisions vide AIR 1972 SC 1371 and AIR 1976 SC 1476 involving similar situation, this Hon'ble High Court in para-6 therein has come to hold as follows:-

“6. From the decree under execution in the case, it is clear that there is no express direction for delivery of possession of the suit land to the plaintiff. The principle is also well established that ordinarily the executing court cannot go

behind the decree. But it is within the competence of the executing court to interpret the decree ought to be executed and for doing so the court can refer to reliefs sought in the plaint and discussions in the judgment to ascertain the true import of the decree. In the present case, as noticed earlier, the plaintiff prayed for declaration of title, confirmation of possession and in the alternative for recovery of possession of the suit land. She asserted in the plainti that she was in possession of the disputed properties but after the entry in the settlement record of rights in their favour, the defendants were threatening to dispossess her. The suit was tried and disposed *ex parte*. Relying on the evidence on record, the court found the plaintiff to be in possession of the property and accordingly passed the decree referred to earlier. Apparently, the court did not feel the necessity to direct recovery of possession in view of its finding that the plaintiff was in possession of the suit properties. Taking these facts and circumstances into consideration, the executing court interpreted the decree to mean that the reliefs sought in the plaint were granted in favour of the plaintiff. Once of the reliefs sought, was to direct recovery of possession. Therefore, it cannot be said that the executing court travelled beyond its jurisdiction or committed any illegality in holding the execution case to be maintainable overruling the objection raised by the petitioner. Thus there is little scope for this court for interfering in this matter in exercise of its revisional jurisdiction. The view taken by me gains support from the decision reported in *Bhavan Vaja v. Solanki Henuji, Mulla Alibhai v. M.H. & C. High School and Chandra Sekhar Rath v. Lingaraj Mohapatra and others*.

Next in the case between ***Rameshwar Dass Gupta V. State of U.P. and another*** as reported in (1996) 5 SCC 728 examining the roll of the executing court exercising its power U/o.21 C.P.C. in para-4 therein came to observe as follows:-

“4. It is a well-settled legal position that an executing court cannot travel beyond the order or decree under execution. It gets jurisdiction only to execute the order in accordance with the procedure laid down under Order 21 CPC. In view of the fact that it is a money claim, what was

to be computed is the arrears of the salary, gratuity and pension after computation of his promotional benefits in accordance with the service law. That having been done and the court having decided the entitlement of the decree-holder in a sum of Rs.1,97,000 and odd, the question that arises is whether the executing court could step out and grant a decree for interest which was not part of the decree for execution on the ground of delay in payment or for unreasonable stand taken in execution? In Court view, the executing court has exceeded its jurisdiction and the order is one without jurisdiction and is thereby a void order. It is true that the High Court normally exercises its revisional jurisdiction under Section 115 CPC but once it is held that the executing court has exceeded its jurisdiction, it is but the duty of the High Court to correct the same. Therefore, we do not find any illegality in the order passed by the High Court in interfering with and setting aside the order directing payment of interest.”

Through both the above decisions law has been fairly settled holding that the Executing Court is bound by terms of judgment and decree and has no authority to either go behind it or beyond it. Through the above Hon’ble apex Court judgment it appears, the Hon’ble apex Court even observed that there is no scope for grant of interest on the decreed amount by the Executing Court, since this was not even a dispute in the suit involved.

9. Now coming back to the case at hand, considering the rival contentions of the parties, this Court finds, undisputedly the suit vide T.S. No.67 of 1997 is for mandatory and permanent injunction. This Court finds, while disposing of the suit the Trial Court decreed the same directing the judgment debtor not only to reinstate the plaintiffs, but to pay the back wages until the plaintiffs are removed from services in due process of law. This Court here finds, in the language of the trial court in the direction part, the direction for payment back wages must relate back till the civil court declares the disengagement and/or

termination of the plaintiffs bad and in certain cases may be dependant till there is refusal to reinstate such person even after plaintiffs the decree holders submit themselves before the Appointment authority to continue in service. This Court finds no difficulty in undertaking the execution exercise in the event it relates to back wages. Coming back to the fact involved, pursuant to such direction and for the allegation at the instance of the judgment debtor that none of the plaintiffs reported back in their service subsequent to the judgment and decree and therefore their entitlements on the back wages ought to be relegated back to the date of judgment and decree in the maximum and the further question as to whether the judgment debtor refused to allowing or debarring the decree holders in joining back their services, since is not a question involved in the suit, this Court finds, such a dispute does not come within the domain of the Executing Court.

In the circumstance there cannot be such benefit unless any such dispute is agitated and adjudicated following due process of law either in a suit or in other proceeding available for the purpose. In the execution petition involving execution of a judgment and decree, role of the Executing Court is confined to the nature of direction and it cannot include any further dispute and/or claim therein. Looking to the particular nature of the suit, this Court here finds, for the pendency of the Execution Proceeding since 1999 and as there is filing of claim statement one after another even till final hearing of the Execution proceeding and for the direction in the suit giving a direction to the defendant to reinstate the plaintiffs and to pay back wages until the plaintiffs are removed from services in due process of law, this Court finds, in the given circumstance, even assuming the plaintiffs are deemed to be continuing on the date of judgment, then they are entitled to back wages till the judgment. This Court here considering the claim

and objection of the parties involved herein that there is no joining back of the plaintiffs and the claim of the Opposite Parties that there has been no allowing to the plaintiffs to join back in their services, this Court is of the opinion that the Plaintiffs in the minimum will be entitled to get back wages till the date the judgment and decree is passed. Controversy so far as; whether there is attempt by the plaintiffs to join back and if there has been denial on their joining by the judgment debtor? is left to be decided in appropriate proceeding and the same has nothing to do with the execution proceeding presently undertaken. It is, at this stage of the matter, this Court reading through the observation and findings of the trial court finds, the trial court has exceeded its jurisdiction and undertaken the exercise of execution entertaining the claim beyond the judgment and decree. There is also wrong application of the judgment taken note thereof. On the other hand judgments taken note in para-8 have direct application to the case at hand. In the process this Court finds, the final order of the Executing Court at Annexure-11 does not stand merit. In the process, this Court interfering in the order at Annexure-11 sets aside the same and remits the matter to the Executing Court to undertake the exercise of execution strictly remaining within the direction of the trial court in disposal of the suit vide T.S. No.67 of 1997 and also taking into account the claim of the plaintiffs-decree holders as they are entitled to back wages at least till the date of judgment and decree and also taking into account the objection of the Petitioners.

10. Both the parties are directed to appear before the Executing Court with a copy of this order on 18th May, 2022 and on production of a copy of this order the Executing Court shall undertake the fresh exercise of execution proceeding and shall complete such proceeding within a period of three months thereafter.

This Court here records the claim of Mr. Mohanty, learned counsel for the Opposite Party No.5 the decree holder that in such event and as there is no dispute with the judgment debtor, the plaintiffs are at least entitled to back wages till the judgment and decree, there should not be any difficulty in depositing the entitlements of the plaintiffs till the judgment and decree in the Executing Court, even in the finalization of the proceeding. Mr. Mohapatra, learned counsel for the Petitioners has no objection to the same. Mr. Mohapatra, learned counsel for the Petitioners, for there is attachment involving higher amount, sought for suitable direction from this Court. This Court thus directs the judgment debtor to deposit at least a sum of Rs.15,00,000/- (rupees fifteen lakhs) before the Executing Court as a matter of security at least within a period of fifteen days hence and in the event such deposit is made within time, the order of attachment shall be lifted. This deposit will, however, be subject to the ultimate outcome in the Execution Proceeding involved.

11. The C.M.P. stands succeeded, but in the circumstance, there is no award of cost.

(Biswanath Rath)
Judge