

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 30643 of 2022

Karunakar Panda

....

Petitioner

Mr. Jayakrishna Mohapatra, Advocate

-versus-

Soumya Manjari Padhi

....

Opp. Party

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

ORDER

01.12.2022

Order No.

1. This matter is taken up through Hybrid mode.
2. Petitioner in this writ petition seeks to assail the order dated 30th September, 2022 (Annexure-4) passed by learned Judge, Family Court, Balasore in Execution Case No.13 of 2021, whereby it directed to issue warrant of arrest against the JDr. in exercise of power under Order XXI Rule 38 CPC.
3. It is submitted by learned counsel for the Petitioner that in view of provision under Section 18 of the Family Courts Act, 1984, the judgment / order of the Family Court shall be executed like a decree of the Civil Court. Thus, the provision of Order XXI CPC is applicable to the case at hand. Learned Family Court did not at all follow the procedure laid down therein. It is his contention that Khairia Police Station could not have been directed to execute the warrant of arrest as the Family Court is exercising power under Order XXI Rule 38 CPC.
- 3.1 Referring to Form-13 to Appendix-E of CPC, learned counsel for the Petitioner submits that warrant of arrest should

have been issued to the bailiff of the Court and not to Khaira Police Station. As such, the order dated 30th September, 2022 is bad for not following of due procedure of law.

3.2 Rule 38 of Order XXI CPC reads as under:-

*“38. **Warrant for arrest to direct judgment-debtor to be brought up.**—Every warrant for the arrest of a judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs (if any) to which he is liable, be sooner paid.”*

The provision makes it clear that warrant shall be executed by the Officer so entrusted by the Court. Thus, while executing such warrant, the Officer so entrusted does not perform his duty as per the provisions of Code of Criminal Procedure, 1973, but under the provisions of Code of Civil Procedure, 1908, as provided under Order XXI Rule 38 CPC.

4. Form-13 of Appendix-E of CPC provides the format for warrant of arrest in execution. Learned counsel for the Petitioner submits that it should be issued to the bailiff of the Court Nizarat (Administrative Office of the Court). The Khaira Police Station being not the administrative office of the concerned Court, the Officer concerned of the said PS could not have been directed to produce the Petitioner/JDr. Such a submission is not acceptable, as Form-13 is a format for issuance of the warrant, but the terminology in the said format can be suitably substituted depending upon the facts and circumstances of the case. In the instant case, the Petitioner having defaulted in complying with the direction, learned Family Court has directed

for issuance of warrant against him by entrusting the same to the Officer concerned of Khaira Police Station. Thus, I find no infirmity in the impugned order.

5. Accordingly, the writ petition being devoid of any merit, stands dismissed.

(K.R. Mohapatra)
Judge



s.s.satapathy