

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1258 OF 2022

Suvakanta Satapathy and another* *Petitioners

Mr. Santosh Kumar Samantaray, Advocate
-versus-

Triptilata Mohanty* *Opp. Party

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

**ORDER
23.12.2022**

Order No.

2. 1. This matter is taken up through hybrid mode.
2. 2. Order dated 18th December, 2021 (Annexure-6) passed by learned Senior Civil Judge, Puri in Execution Petition No.03 of 2021 (arising out of C.S. No.79 of 2018) is under challenge in the CMP, whereby a petition to stay further proceeding in the execution case during pendency of C.M.A. No.125 of 2021 filed under Order IX Rule 13 C.P.C. by the Petitioners has been rejected.
3. 3. Mr. Samantaray, learned counsel for the Petitioners submits that law is well settled that when a petition under Order IX Rule 13 C.P.C. is pending, learned executing Court should await the decision on such petition to proceed with the execution case, failing which there is every likelihood of multiplicity of litigation. In the instant case, although learned executing Court took note of the said legal position, but holding that the prayer of the Petitioners do not come within the scope and ambit of Order XXI Rules 26 and 29 C.P.C., rejected the application and refused

to stay further proceeding in Execution Petition No.03 of 2021. Hence, this CMP has been filed for the aforesaid relief.

4. In course of hearing, Mr. Samantaray, learned counsel for the Petitioners, on instruction, submits that the Petitioners are ready to deposit Rs.5,00,000/- (Rupees Five Lakh Only) before learned executing Court for securing the decree. Hence, he prays for stay of execution proceeding till disposal of C.M.A. No.125 of 2021.

5. Taking note of the submission made by learned counsel for the Petitioners, this Court is of the considered opinion that when the Petitioners-J.Drs are ready to deposit a sum of Rs.5,00,000/- before learned executing Court, their prayer for stay of execution proceeding during pendency of C.M.A. No.125 of 2021 should be re-considered giving opportunity of hearing to the parties concerned.

6. In that view of the matter, this Court keeping in abeyance the impugned order under Annexure-6 directs that in the event, the Petitioners file an application for stay of further proceeding in execution case within a period of two weeks hence, detailing their grievance and by depositing a sum of Rs.5,00,000/- before learned executing Court, their petition shall be considered on its own merit giving opportunity of hearing to the parties concerned.

7. With the aforesaid observation and direction, this CMP is disposed of.

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

(K.R. Mohapatra)
Judge