

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.242 of 2024

National Highways Authority of India through the Project Director PIU Patna Office at The Project Director National Highways Authority of India Project Implementation Unit Patna Shivpuram Sainik Colony, Near Hamuman Mandir, Gola Road, Danapur Patna-801503.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Collector, Buxar.
3. The Then Arbitrator cum Addl. Collector, Buxar.
4. The District Land Acquisition Officer, Buxar.
5. The In-Charge Officer of Record Room Collectorate, Buxar.
6. Akhauri Birendra Kumar Sinha @ Akhauri Dhirendra Kumar Sinha S/o Late Akhauri Sita Ram Singh, resident of Village Churamanpur, PS Buxar Dist. Buxar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Kumar Goutam, Advocate
For the Respondent/s	:	Mr. Santosh Chandra Bhaskar, AC to GP-11

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 21-04-2025 Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 07.12.2023 passed by learned Additional District Judge-III, Buxar in Execution Case No. 15 of 2020, whereby and whereunder the stay petition filed under Order 21, Rule 26 and Rule 29 read with Section 151 of the Code of Civil Procedure (hereinafter 'the Code') by the petitioner to stay the execution proceeding has been rejected.

3. Learned counsel for the petitioner submits that the



petitioner has filed Miscellaneous Application No. 33 of 2022 before District Judge, Buxar challenging the Award dated 20.02.2015 passed by the then Arbitrator -cum- Additional Collector, Buxar in Case No. 12 of 2014 for which execution proceeding has been going on in Execution Case No. 15 of 2020.

4. From bare reading of Order 21 Rule 26 and Rule 29 of the Code, it is clear that under Order 21 Rule 26 of the Court the executing court may stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution. Apparently, the same is not the case here. The petitioner has already approached the court of learned District Judge under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the Award. However, Order 21 Rule 29 of the Code provides that in a situation where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may stay the execution of the decree until the pending suit has been decided. Evidently, there



is no suit pending between the parties before the executing court. Therefore, there is no application of Order 21 Rule 29 of the Code in the facts and circumstances of the case. Further, under Section 36(2) of the Arbitration and Conciliation Act, 1996, where an application to set aside an arbitral award has been filed under Section 34, the filing of such application by itself does not render the award unenforceable unless the court grants an order to stay of the arbitral award in accordance with the provisions of sub-section (3) of the same. This provision is akin to the provisions of Order 41 Rule 5 of the Code. Therefore, it is the appellate court which has got power to stay the execution proceeding and the executing court, as such has no such power to stay the proceeding in the given facts and circumstances.

5. Learned counsel for the petitioner submits that the petitioner has already filed application in Miscellaneous Case No. 33 of 2022 for stay of execution proceeding before the learned District Judge, Buxar and the stay application is still pending and has not been disposed of. Learned counsel, at this stage, submits that the petitioner seeks withdrawal of the present petition with liberty to approach learned District Judge to dispose of the application filed before it seeking stay on the



execution proceeding as the miscellaneous case is still pending despite it was fixed for final hearing on 07.08.2024.

6. Having regard to the submission, the present petition is dismissed as withdrawn with liberty to the petitioner to approach learned District Judge, Buxar with a prayer for disposal of the application filed seeking stay on the execution proceeding or for final disposal of Misc. Case No. 33 of 2022 as the matter has already been fixed for final hearing in the month of August, 2024.

(Arun Kumar Jha, J)

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