

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.29 of 2024

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1. Manzoor Hussain, S/o Mahboob Hussain, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk, District-Patna.
 2. Mahfooz Hussain Arif, S/o Mahboob Hussain, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk, District-Patna.
 3. Matloob Hassan Shahzada, S/o Mahboob Hussain, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk, District-Patna.

... .. Petitioner/s

Versus

1. Md. Nazir Ahmad, S/o Late Noor Mohammad, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
2. Md. Khursheed Anwar, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
3. Md. Parwege Anwar, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
4. Md. Jawed Anwar, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
5. Nausad Anwar Ansari, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
6. Md. Shamshad Anwar, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
7. Md. Shahnawaj Anwar, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
8. Shaheen Jabeen Wife of Md. Jahagir Alam, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.
9. Mahajabeen Naz, D/o Md. Nazir Ahmad, resident of Mohalla-Shah Fasahat Ka Maidan, P.S.-Chowk Patna City, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 20-01-2025

The record has been taken up on mentioning being
made on behalf of the petitioners.

2. Heard learned counsel for the petitioners and I



intend to dispose of the instant petition at the stage of admission itself.

3. The petitioners are aggrieved by the order dated 30.11.2023 passed by the learned Munsif, Patna City in Execution Case No.08 of 2017 whereby and whereunder the learned executing court dismissed the petition dated 02.08.2023 filed by the petitioners under Order 21 Rule 29 read with Section 151 of the Code of Civil Procedure (hereinafter referred to as 'the Code').

4. The learned counsel for the petitioners submits that the learned executing court has not considered the observation made by the learned Single Judge of this Court in the judgment dated 11.08.2017 passed in Second Appeal No.325 of 2000 wherein it has been observed that '*none of the findings recorded in this suit for eviction, at any stage, shall prejudice the case or claim of either of the parties over the suit property in a suit for possession over the suit property on the basis of title before competent court in accordance with law*'. The learned counsel further relied on two decisions of the Bombay High Court, first in the case of ***Super Max International Pvt. Ltd and another vs. State of Maharashtra and another*** reported in **2009 (2) Mh.L.J 134** and second in the case of ***Narsidas Nathubhai***



Vohra vs. Manharsingh Agarsing Thakor reported in *AIR 1931 Bombay 247*, to stress the point that power of grant of stay is discretionary and the learned executing court should have exercised the discretion in favour of the petitioners since the title suit of the petitioners is pending and if without disposal of the title suit, the petitioners are dispossessed in the execution case, they would be unduly prejudiced and would suffer irreparable harm.

5. Having perused the record and considered the submission made by the learned counsel for the petitioners, I am of the opinion that the impugned order does not need any interference for the reason that the learned executing court has discussed all the contentions and rejected the same with a reasoned and speaking order. There could be no stay of the proceeding under Order 21 Rule 29 of the Code in the present situation since the proceedings of title suit and execution are pending before two different courts.

6. Now, Order 21 Rule 29 of the Code reads as under :

“29. Stay of execution pending suit between decree-holder and judgment-debtor.—
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, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing”.

7. It clearly shows two proceedings should be pending before the same court. This is condition precedent under which the court in which suit is pending may stay the execution or pass orders regarding stay till the disposal of the pending suit.

The Hon’ble Supreme Court in the case of ***Shaukat Hussain @ Alim Akram vs. Bhuneshwari Devi (dead) by L.Rs.*** reported in ***(1972) 2 SCC 731*** held in paragraph 6 as under :

“6. Order 21 CPC. deals generally with the execution of decrees and orders. That order is divided into several topics, each topic containing a number of rules. The first four topics cover Rules 1 to 25 and the fifth topic, namely, stay of execution comprises four rules, namely, Rules 26 to 29. A perusal of these rules will show that the first three rules i.e. Rules 26 to 28 deal with the powers and duties of a court to which a decree has been sent for execution under Rule 26, that court can stay the execution of the decree transferred to it for execution 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 over the former for an order to stay execution or for any other order relating to the decree or execution which might have been made by the court of first instance or the appellate court. It will be seen, therefore, that under Rule 26 the transferee court has a limited power to stay execution before it. Moreover, under sub-rule (2) if any property is seized by it in the course of execution, it may even order the restitution of the property pending the result of the application made by the judgment-debtor to the Court of the first instance or to the appellate court. Rule 27 says that any such restitution made under sub-rule (2) of Rule 26 will not prevent the property of the judgment-debtor from being retaken in execution of the decree sent for execution. Rule 28 provides that any order of the court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the court to which the decree was sent for execution. And then we have Rule 29, which deals with a different situation. The Rule is as follows:

“Where a suit is pending in any court against the holder of a decree of such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against



the judgment-debtor and the other a suit at the instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition, Mr Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the Court of Munsif 1st, Gaya and there was also a suit at the instance of the judgment-debtor against the decree-holder in that court. But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor; it is further necessary that the suit must be against the holder of a decree of such court. The words "such court" are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court. That appears to be the plain meaning of the rule".

8. So far as contention of learned counsel for the petitioners about the order of the learned Single Judge of this Court passed in Second Appeal No. 325 of 2000 is concerned, the same cannot be construed to mean that the learned executing court is bound to stay the execution proceeding. The order was meant only for the purpose that while disposing of the claim of title and possession, any observation made in the second appeal could not cause prejudice to the claim of either of the parties.



9. Similarly, the authorities cited by the learned counsel for the petitioners with regard to power of stay being discretionary, the facts of the present case are clearly distinguishable from the facts of the decisions cited supra. In the case of ***Super Max International Pvt. Ltd*** (supra), learned Single Judge of Bombay High Court has referred to the decision of the Hon'ble Supreme Court rendered in the case of ***Atma Ram Properties (P) Ltd. vs. Federal Motors Pvt. Limited*** reported in ***2005 (1) SCC 705***, wherein the Hon'ble Supreme Court has discussed the powers of the appellate court and conditions under which it should grant stay. Evidently the same is not the case here as the matter is not before the appellate court. Similarly, in the case of ***Narsidas Mathubhai Vohra*** (supra), only the scope and ambit under Order 21 Rule 29 of the Code has been discussed. When it has been made clear by the Hon'ble Supreme Court in the case of ***Shaukat Hussain*** (supra) that two proceedings must be before the same court, there could be no ambiguity on the scope of the Order 21 Rule 29 of the Code. Moreover, in the case of ***Narsidas Nathubhai Vohra*** (supra), Hon'ble Division Bench held that the court in which suit is pending has jurisdiction to pass the order under that rule. The Hon'ble Division Bench has also held that there is no



indication in the rule that the application must be made to the court in execution proceeding. Therefore, if the courts are different, in the light of the decision of the Hon'ble Supreme Court in the case of *Shaukat Hussain* (supra) that there should be two simultaneous proceedings in one court, the stay could not be granted by the executing court.

10. In the light of aforesaid facts and circumstances of the case, I do not find the impugned order suffers from any infirmity as the same has been passed after consideration of all the aspects of the matter and, therefore, the same is affirmed.

11. Hence, I do not find any merit in the instant petition and, accordingly, the same is dismissed.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	21.01.2025
Transmission Date	NA

