

GAHC010204682024



undefined

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(Civil)/3108/2024 in RSA/186/2024

LATA GARH AND ANR
W/O SRI PIRTU GORH RESIDENT OF TELKHAD BORGOLAI
PO BORGOLAI
PS AND SUB DIVISION MARGHERITA
DIST TINSUKIA, ASSAM

2: SRI PIRTU GORH
S/O LATE BARSHA GORH
RESIDENT OF TELKHAD BORGOLAI
PO BORGOLAI, PS AND SUB DIVISION MARGHERITA
DIST TINSUKIA, ASSAM

VERSUS

SANGITA CHETRY
W/O GYAN BAHADUR CHETRY RESIDENT OF TELKHAD BORGOLAI
PO BORGOLAI
PS AND SUB DIVISION MARGHERITA
DIST TINSUKIA, ASSAM

Advocate for : MR A K CHAUDHURY
Advocate for : MR. B D KONWAR SR. ADV. appearing for SANGITA CHETRY

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.02.2026

Heard Mr. N. Das, learned counsel for the applicants and also heard Ms. M.

Zomuanpuui, learned counsel for the respondent/opposite party.

2. This interlocutory application under Order XLI Rule 5 read with Section 151 of the Code of Civil Procedure is preferred by the applicants for staying operation of the judgment and decree dated 25.06.2024, passed by the learned Civil Judge (Sr. Division), Tinsukia, in Money Appeal No.02/2023.

3. Notably, vide impugned judgment and decree dated 25.06.2024, the learned Civil Judge (Sr. Division), Tinsukia, has reversed the judgment and decree dated 23.12.2022, passed by the learned Munsiff, Margherita, in Money Suit No.3/2017.

4. Mr. Das, learned counsel for the applicants submits that the applicants have preferred one RSA, being RSA No.186/2024 and the same has been admitted and notice has been issued and service has been completed and the record has also been received and there is a requirement for staying operation of the impugned judgment and decree dated 25.06.2024, passed by the learned Civil Judge (Sr. Division), Tinsukia, in Money Appeal No.02/2023, as the respondent/opposite party has already instituted one execution proceeding before the learned Executing Court for execution of the money decree.

5. Mr. Das further submits that the applicants will deposit the security amount as directed by this Court before the learned Executing Court within a time fixed by this Court and in the event of failing to deposit the same, the learned Executing Court may proceed with the execution case. Under such circumstances, Mr. Das has contended to allow this application by staying the operation of the judgment and decree dated 25.06.2024, passed in Money Appeal No.02/2023 by the learned Civil Judge (Sr. Division), Tinsukia.

6. Per contra, Ms. Zomuanpuui, learned counsel for the respondent/opposite party referring to a decision of Hon'ble Supreme Court in **Shekhawati Art and Exports v. United India Insurance Company Ltd. & Ors.** [Special Leave to Appeal (C)

No.11233/2024], submits that staying of the money decree is, however, subject to depositing part of the money decree and blanket stay order cannot be granted in a routine manner and as such, she submits that the applicants may be directed to deposit 50% of the decretal amount before the learned Executing Court within a stipulated period, else the opposite party may proceed with the execution proceeding.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the application and the documents placed on record and also perused the record of RSA No.186/2024. And also gone through the decision of Hon'ble Supreme Court in **Shekhawati Art and Exports(supra)**.

8. In the case of **Shekhawati Art and Exports(supra)**, Hon'ble Supreme Court discussing two of its earlier decisions in **Sihor Nagar Palika Bureau Vs. Bhabhlubhai** reported in (2005) 4 SCC 1, and **Kanpur Jal Sansthan and Anr Vs. Bapu Constructions** reported in (2015) 5 SCC 267, held that blanket interim order could not be passed in entertaining the appeal against a money decree relies. Notably, in the case of **Sihor Nagar Palika Bureau(supra)** Hon'ble Supreme Court has held as under:-

“6. Order 41 Rule 1(3) CPC provides that in an appeal against a decree for payment of amount the appellant shall, within the time permitted by the appellate court, deposit the amount disputed by the appeal or furnish such security in respect thereof as the court may think fit. Under Order 41 Rule 5(5), a deposit or security, as abovesaid, is a condition precedent for an order by the appellate court staying the execution of the decree. A bare reading of the two provisions referred to hereinabove, shows a discretion having been conferred on the appellate court to direct either deposit of the amount disputed in the appeal or to permit such security in respect thereof being furnished as the appellate court may think fit. Needless to say that the discretion is to be exercised judicially and not of a given case. Ordinarily, execution of a money decree does not amount to irreparable injury and in the event of the appeal

being allowed, the remedy of restitution is always available to the successful party. Still the power is there, of course a discretionary power, and is meant to be exercised in appropriate cases.”

9. Indisputably, the said RSA has already been admitted for hearing and the parties have also entered appearance and the record has also been received and the matter is ready for hearing. It is also not in dispute that the respondent/opposite party has already initiated execution proceeding before the learned Executing Court.

10. Thus, having considered the facts and circumstances on the record and also considering the relevant provision i.e. Order XLI Rule 1(3) CPC and also Rule 5 CPC, and further considering the dictum of Hon'ble Supreme Court in **Shekhawati Art and Exports (supra)**, this Court is inclined to dispose of this application by directing the applicants to deposit a sum of Rs.50,000/- being the security, before the learned Executing Court within a period of 2(two) weeks from today. On such deposit being made before the learned Executing Court within a period of 2(two) weeks, the impugned judgment and decree dated 25.06.2024 shall be stayed, till disposal of the RSA No.186/2024.

11. It is further provided that if the applicant fails to make deposit, the stay so granted would automatically stands vacated in view of Sub-Rule 5 to Rule 5 of Order XI.

Sd/- Robin Phukan
JUDGE

Comparing Assistant