GAHC010220982026

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

Case No. : CRP(IO)/512/2026

SUSHIL KUMAR SAHA
SON OF LATE SURJYA KUMAR SAHA, RESIDENT OF TANGNIBAZAR, P.O. AND P.S.- DHULA, DISTRICT- DARRANG, ASSAM

VERSUS

THE BODOLAND TERRITORIAL COUNCIL AND 4 ORS.
REPRESENTED BY PRINCIPAL SECRETARY TO THE BODOLAND TERRITORIAL COUNCIL, KOKRAJHAR

2:SECRETARY TO THE BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR

3:THE EXECUTIVE ENGINEER
PHE
MUSHALPUR DIVISION
MUSHALPUR
BAKSA
ASSAM

4:THE ASSISTANT EXECUTIVE ENGINNER (PHE)
TAMULPUR SUB-DIVISION
TAMULPUR
DIST- BAKSA
ASSAM

5:STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
DISPUR
ASSAM

Advocate for the Petitioner : MR. K BHATTACHARJEE, ABBASH U AHMED,MS. P BORDOLOI,MR. M SAIKIA

Advocate for the Respondent : SC, BTC, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 12.10.2026

1. Heard Mr. K. Bhattacharjee, the learned counsel for the petitioner. Also heard Mr. A. K. Bhuyan, the learned senior counsel assisted by Mr. N. R. Sharma, the learned counsel for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner impugning the orders dated 18.02.2026 and 19.09.2026, passed by the Court of learned Commercial Appellate Court, Baksa, in Misc.(J) Case No. 21/2025.

3. By the order dated 18.02.2026, passed in Misc.(J) Case No. 21/2025, further proceedings of Money Execution Case No. 7/2025, pending before the Commercial Court i.e., the Court of learned Civil Judge (Senior Division), Baksa was stayed till the question regarding the jurisdiction of Commercial Appellate Court is ascertained. Whereas, by the order dated 19.09.2026 passed in Misc. (J) Case No. 21/2025, the said stay was extended.

4. The facts relevant for consideration of the instant CRP(IO), in brief, are that the present petitioner preferred the commercial suit which was registered as Commercial Suit No. 1/2024, before the Commercial Court of learned Civil Judge (Senior Division), Baksa, Mushalpur for realization of bill amount of Rs.48 Lakhs along with an interest at the rate of 6%. The said commercial suit was

decreed *ex-parte* on 04.06.2025. The respondents preferred an appeal before the Commercial Appellate Court of learned District Judge, Baksa, Mushalpur, along with an application for condonation of delay. The said delay condonation was dismissed for default. As such, the respondent again approached the Appellate Court for restoration of the delay condonation application. In filing the restoration application, there was again a delay of 63 days. The respondents have also prayed for condoning the said delay before the Commercial Appellate Court. The said Misc. case was registered as Misc.(J) Case No. 21/2025 before the Court of learned Commercial Appellate Court of District Judge, Baksa.

5. It appears that the said Misc. case was listed for hearing before the Court on 01.08.2026. The present petitioner raised a plea regarding the jurisdiction of the Commercial Appellate Court on the basis of judgment passed by this Court in FAO 73/2025 on 18.12.2025. When the judgment of this Court passed in FAO No. 73/2025 was brought to the notice of the Commercial Appellate Court of the District Judge, Baksa, the learned District Judge deferred the hearing of Misc.(J) Case No. 21/2025 on the ground that it is necessary to ascertain before proceeding further by the said Court as to whether the said Commercial Appellate Court is having jurisdiction to entertain the appeal preferred by the present respondents. As such, the Commercial Appellate Court found it expedient to stay the execution proceeding, i.e., Money Execution Case No. 7/2025, pending in the Commercial Court of learned Civil Judge (Senior Division), Baksa, till the jurisdiction matter of commercial Appellate Court is ascertained. The matter was next listed on 19.09.2026.

6. In the meanwhile, the Government of Assam, by its notification dated 17th August 2026, issued under Section 3 of the Commercial Courts Act, 2015

notified and designated the Courts of District Judges in the State of Assam to act as Commercial Appellate Courts to hear all appeals preferred from Commercial Courts.

7. When the matter was taken up again on 19.09.2026, the engaged counsel for the present petitioner raised a plea before the Commercial Appellate Court that the jurisdiction of Appellate Court of the commercial suit has not been clearly mentioned in the notification issued by the Government on 17.08.2026. As such, he prayed for sometime to get it clarified as to which Court will be the Commercial Appellate Court for the commercial suits arising in the district of Baksa. The Court of learned District Judge, Baksa allowed the prayer of the present petitioner to deferthe matter for clarification regarding the jurisdiction of the Commercial Appellate Court and, in the meanwhile, the stay of Money Execution Case No. 7/2025 which was granted earlier was extended and next date was fixed on 03.10.2026 for hearing on the delay condonation application.

8. The learned counsel for the petitioner submits that since there was no application for stay of the execution proceeding before the Commercial Appellate Court on 01.08.2026, the Court could not have granted stay on its own on the Money Execution Case No. 7/2025. The learned counsel for the petitioner further submits that since by virtue of the order passed on 18.12.2025 by this Court in FAO No. 73/2025, the Court of learned District Judge, Baksa did not have the jurisdiction to act as Commercial Appellate Court and as such it could not have passed the orders of stay of execution proceeding.

9. He further submits that since the appeal against the *ex-parte* decree

passed by the Commercial Court of learned Civil Judge (Senior Division) was yet to be registered and the application for condonation of delay which was dismissed for default was yet to be restored, the Court of learned District Judge, Baksa could not have granted stay of the execution proceedings. He submits that the Court of learned District Judge, Baksa does not have the power to *suo motu* exercise its inherent jurisdiction to stay the Money Execution Case No. 7/2025 even without condoning the delay in filing of the appeal in which the *ex-parte* decree was challenged. In support of his submission, he has cited the ruling of Apex Court in the case of "***State of West Bengal and others Vs. Somdeb Bandyopadhayay and others***" reported in "***2009 AIR (SC)1289***" as well as a judgment of the High Court of Chhattisgarh in the case of "***Zilla Sahakari Kendriya Bank Maryadit, Bilaspur Vs. Devendra Pandey***" reported in "***2023 Supreme (Chh) 433***".

10. On the other hand, Mr. A. K. Bhuyan, the learned senior counsel for the respondents has fairly submitted that though in the application filed by the present respondents under Section 5 of the Limitation Act for condoning the delay in preferring the restoration application, no separate prayer for staying the Money Execution Case No. 7/2025 was made, however, an averment to that effect has been made in Paragraph No. 1 of the delay condonation application.

11. He further submits that though under Order 41 Rule 5 of the Code of Civil Procedure, 1908, the powers of stay of execution proceeding of a decree which is challenged in the appeal is provided for, however, there is no provision in the Code of Civil Procedure where, even before registration of an appeal and during pendency of the application for delay condonation, stay may be granted. As such, the only option for seeking stay under such circumstances is to use

inherent power of the Court under Section 151 of the Code of Civil Procedure, 1908.

12. He submits that it was due to the objections raised by the present petitioner before the Commercial Appellate Court of District Judge, Baksa regarding jurisdiction of such Court to act as Commercial Appellate Court that the said Court deferred the matter for ascertaining as to whether the said Court has jurisdiction to act as Commercial Appellate Court or not and under such circumstances, the said Court itself deemed it proper for the interest of justice to stay the further proceedings of Money Execution Case No. 7/2025 till a decision regarding point of jurisdiction raised by the present petitioner may be taken by the said Court.

13. The learned senior counsel for the respondents submits that there is no illegality or impropriety under such circumstances by the Commercial Appellate Court of District Judge, Baksa in invoking its inherent power under Section 151 of the Code of Civil Procedure, 1908 to stay the further proceeding of Money Execution Case No. 7/2025.

14. The learned senior counsel for the respondents has further submitted that in the meanwhile, on the next date i.e., 03.10.2026, the Commercial Court of learned District Judge, Baksa while taking up Misc.(J) Case No. 21/2025 has partly heard the matter and fix said the case on 07.11.2026 for further hearing and passing of necessary orders. He further submits that the order of stay of execution proceeding granted by the said Court earlier was also extended till the next date i.e., 07.11.2026. In support of his submission, the learned senior counsel for the respondents has cited two judgments passed by the Co-ordinate

Benches of this Court.

15. I have considered the submissions made by the learned counsel for both sides and have gone through the rulings cited by the learned counsel for both sides in support of their respective submissions.

16. Though, while considering an application for condonation of delay accompanying the memo of appeal and an application for stay of impugned decree, when such appeal has been filed belatedly, it is for the said Appellate Court to first decide the delay condonation application and then after registration of the appeal, the prayer for stay has to be considered. However, this does not mean that a Civil Court would not be having inherent powers to pass such orders regarding stay of execution of the impugned decree as it deems fit and necessary under the circumstances of a particular case.

17. In the instantcase, on perusal of the order dated 01.08.2026, it appears that on that day by virtue of the order passed by this Court on 18.12.2025 in FAO No. 73/2025, the Court of learned District Judge, Baksa was not having the jurisdiction to act as Commercial Appellate Court. However, later on, said lacuna has been filled up by the Government by issuing its notification dated 17.08.2026, whereby the Court of District Judges across all the districts in the State of Assam were designated as Commercial Appellate Court respectively for the purpose of exercising appellate jurisdiction under Commercial Courts Act, 2015.

18. It appears that when the matter was again taken up on 19.09.2026, the Court of learned District Judge, Baksa was in fact having jurisdiction to act as

Commercial Appellate Court in pursuant to the aforesaid notification of the Government of Assam. However, on that day also, a question was raised regarding the jurisdiction of the Court of learned District Judge, Baksa to act as Commercial Appellate Court and it was the present petitioner who sought for sometime to get said issue clarified.

19. It appears that by order dated 19.09.2026, the prayer for adjournment made by the present petitioner on the plea that some clarification is required on the notification issued by the Government, was allowed by the Court of learned District Judge, Baksa and it was further directed that in the meanwhile the execution proceeding pending before the Commercial Court of learned Civil Judge (Senior Division) shall remain stayed.Apparently, such order of stay was not passed on any application by any of the parties, but by the Court itself *suo motu*.

20. This Court is of considered opinion that under the facts and circumstances of the case in hand, the act of exercising inherent jurisdiction by the Court of learned District Judge, Baksa, under Section 151 of the Code of Civil Procedure, 1908 may not be regarded as erroneous or improperon any count.

21. This Court is unable to persuade itselfwith the submissions made by the learned counsel for the petitioner that the Court does not have power to exercise its inherent jurisdiction on its own if the circumstances so warrants and it has to wait for an application by any of the parties to do so. The power under Section 151 of the Code of Civil Procedure, 1908 may be exercised by a Civil Court on an application filed by any person or on its own motion also if the ends

of justice may be served by the same.

22. In the instant case, as the Misc.(J) Case No. 21/2025 has already been listed for hearing the present petitioner and passing necessary orders, this Court does not find it necessary for ends of justice to interfere the impugned orders in any manner at this stage. Rather, the petitioner will be at liberty to raise any plea before the Court of learned District Judge, Baksa when the matter is taken up for hearing on 07.11.2026. The said court shall dispose of the aforesaid Misc. (J) Case No. 21/2025 after taking into consideration of the contentions raised by both the sides on merit.

23. With the above observations, this CRP(IO) is disposed of.

JUDGE

Comparing Assistant