

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No.592 of 2018**

Sayed Nair Hasan S/o Sayed Ibme Hasan, aged about 48 years, Proprietor new Taj Velding and Repairing Works and Rajabadi R/o. Ward No.25, Rajnandgaon, Chhattisgarh

----Petitioner**Versus**

Santi Singh S/o Shri Raghuvir Singh, aged about 27 years, R/o Budhwari Para, Dongargarh, District Rajndngaon, Chhattisgarh

---- Respondent

 For Petitioner : Mr.B.P.Singh, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****13/09/2018**

1. This writ petition is directed against the order dated 8.5.2018 passed by the trial Court rejecting the petitioner's/judgment debtor's application under Order 21 Rule 29 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter called as "CPC").
2. Mr.B.P.Singh, learned counsel for the petitioner/judgment-debtor, would submit that the order passed by the trial Court is unsustainable and bad in law as present is a fit case where the trial Court ought to have exercised discretion vested in it under Order 21 Rule 29 of the CPC.
3. I have heard learned counsel for the petitioner and perused the impugned order and other documents annexed with the writ petition.
4. In the instant case, the judgment and decree was passed by the trial Court on 2.7.2013. A decree so passed has still not been executed and the petitioner/judgment-debtor has filed this application under Order 21 Rule 29 of the CPC stating that decree passed is not

executable as he has filed civil suit for setting aside sale deed dated 30.11.2015/1.12.2015.

5. At this stage, it would be appropriate to notice Order 21 Rule 29 of the CPC, which states 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.”

The jurisdiction to stay execution of decree under Order 21 Rule 29 of the CPC has to be exercised with great care and only in exceptional and extra-ordinary cases as the power to grant stay is discretionary.

6. Though the power to grant stay is discretionary, yet it should be exercised on certain legal principles; so the question for consideration is not whether the Court has got the power to grant stay under Order 21 Rule 29 of the CPC, but the manner in which the Court would ordinarily exercise its discretion vested in it by law.
7. The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of the decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the decree might succeed. Such suits are also of very precarious nature. The allegations therein ordinarily would be that previous decree was obtained by fraud or collusion or that the decree was not binding on the present plaintiff as the transaction entered into by the judgment-debtor was tainted with immorality and thus onus being very heavy on the plaintiff to establish fraud and

similar charges. That being the position, a person should not be deprived of the fruits of his decree merely because suits of the frivolous character are instituted and litigants are out after further series of litigations. The decree must be allowed to be executed, and unless an extra-ordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled. No hard and fast rule can be laid down in what cases stay would be granted or refused. But as has already been stated, a rigorous test is to be applied. The applicability of Order 21 Rule 29 of the CPC cannot be taken lightly and as a matter of right and discretion to exercise the power should be granted only in exceptional and extra-ordinary case made out by the judgment-debtor (See **Judhistir Jena v. Surendra Mohanty and another**¹).

8. Reverting to the facts of the present case, a decree granted in favour of the decree-holder directing delivery of possession and arrears of rent way back on 2.7.2003 by the petitioner/judgment-debtor, stay of execution was sought on the ground that he has instituted a suit for declaration and injunction stating that decree dated 2.7.2003 is not executable and sale deeds dated 20.11.2015 and 1.12.2015 are liable to be declared null and void, therefore till the adjudication of suit, decree granted earlier be not executed and it be stayed. Para 12 and 13 of the application states as under:-

“19. यह कि, उपरोक्त कारणों वश ही निर्णित ऋणी / प्रतिवादी द्वारा व्य.वा. वास्ते उद्घोषणा बाबत् स्थायी व्यादेश हेतु प्रस्तुत किया गया है जिसके द्वारा दिनांक – 02/07/2003 को द्वितीय व्य. न्यायालय वर्ग-2, राजनांदगांव द्वारा व्य.वा. क्र. – 212-3 अवर्ष 2001 में पारित डिक्री निष्पादन योग्य नहीं रह जाने के कारण उपास्त किये जाने तथा विवादित भूभाग शीट क्रमांक – 59-अ. प्लॉट नं. 31, क्षेत्रफल 2500 वर्गफुट मे से 1250 व.फू. भूमि को क्रय करने का प्रथम अधिकार प्रारंभ से नि. ऋणी को था इस कारण विक्रय पत्र दिनांक – [30/11/2015](#) को तथा विक्रय पत्र

¹ AIR 1969 ORISSA 233

दिनांक-01/12/2015 को अपास्त किये जाने हेतु व्य.वाद प्रस्तुत किया गया है।

13. यह कि, उपरोक्त करणोवश श्रीमान न्यायालय में लंबित निष्पादन वाद की अग्रिम कार्यवाही, डिक्री के निष्पादन की कार्यवाही को, जब तक कि निर्णित ऋणी द्वारा व्य. वाद प्रस्तुत किया गया है उसका अंतिम रूप से विनिश्चय नहीं हो जाता है तब तक के लिये लंबित निष्पादन वाद की कार्यवाही को रोका जाउन न्याय संगत होगा।”

9. A close perusal of the above-stated averment in the application would show that merely on the ground of pendency of civil suit stating the decree passed earlier is not executable, Order 21 Rule 29 of the CPC is sought to be invoked. There is no averment in the application that decree earlier granted was passed on the basis of fraud played or on the basis of mis-representation or any other strong or exceptional ground is pleaded to stay the operation of decree granted earlier. No such extra-ordinary case is made out to grant stay of execution of decree.

10. Thus, I am of the considered opinion that the trial Court is absolutely justified in rejecting the application under Order 21 Rule 29 of the CPC. I do not find any merit in that application. Accordingly, the writ petition deserves to be and is hereby dismissed. No cost(s).

11. Decree was granted by the trial Court way back on 2.7.2003, yet the judgment-debtor is awaiting for fruits of decree for last 15 years. The Executing/trial Court is directed to execute the decree within two months from the date of receipt of certified copy of this order and inform to Registry of this Court that decree has been executed.

Sd/-

(Sanjay K.Agrawal)
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR**WP227 No.592 of 2018****Petitioner**

Sayed Nair Hasan

Versus**Respondent**

Santi Singh

(Head-note)

(English)

Application under Order 21 Rule 29 of the Code of Civil Procedure to stay execution of decree has to be granted on making an extra-ordinary case.

(हिन्दी)

सिविल प्रकिया संहिता के नियम 29 के आदेश 21 के अंतर्गत डिक्री के निष्पादन के स्थगन के आवेदन की स्वीकृति असाधारण प्रकरण निर्मित होने पर प्रदान की जा सकती है।

