

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<b>DATE</b>	<b>ORDER</b>	<b>REMARKS</b>
<b>27.08.2024</b>	<p>Case called out, parties are present. Today record is fixed for the hearing and order on the petition on dated 23.01.2020 by the judgment Debtor. Rejoinder to this petition has been filed by the Decree holder on dated 05/12/2023.</p> <p>It has been submitted by the Ld counsel of Judgment debtor that Earlier a Eviction Suit no-88/2013 has been filed by the Decree holder against Judgment Debtor in court of Munsif, at Bettiah later on the record was transferred to Munsif Court Narkatiaganj. In the said suit plaintiff was decree holder and defendant was the judgment-Debtor. In the Eviction suit no-88/2013 Defendant filed his written statement on dated 10-03-2014 and Defendant also filed his pairvi in the suit till dated 02-07-2014. It further stated that later on Defendant filed pairvi through Advocate Clerk namely Chintamani Tiwari. It further stated by the ld Counsel of Judgment Debtor that in year 2014 son of Judgment Debtor namely Abhas kumar was diagnosed with cancer and he went for treatment to various cities and later on his son leg was cut and in this period Adv. Clerk was filling Pairavi in the Eviction Suit no-88/2013</p> <p>In para-3 of this petition ld counsel stated that suit land were in possession of Judgment debtor and they were repairing the suit land and during that period Decree holder came and they told him to stop the repairing work and they also made complaint to nearest police station and later on Judgment debtor came to know that suit land were decreed in favour of plaintiff through the court in Eviction suit no-88/2013.After knowing this, Judgment Debtor came to his Advocate Clerk but he did not tell anything and later on he came to know that, that Eviction suit has been transferred to Munsif Court Narkatiaganj.</p>	

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p><b>Continue 27.08.2024</b></p>	<p>When Judgment Debtor came to inquire about that suit at munsif court narkatiaganj, then he came to know that no any pairvi was given by the concerned Advocate clerk at Narkatiganj and due to which decree were passed Ex-parte in favour of plaintiff in Defendant Absence.</p> <p>Later on Judgment debtor after taking Certified copy of Judgement filed a Misc.Petition no-27/2019 in munsif court Narkatiganj and that is pending at the stage of appearance of the Decreeholder.</p> <p>Furher it has been prayed by the Ld. Counsel for Judgement Debtor to Stay this Execution case-08/2019 till the disposal of the Misc.case 27/2019.</p> <p>The Decree holder vide rejoinder dated 05.12.2023 opposed the aforesaid prayer of the petition and stated that petition dated 23.01.2020 is not maintainable either in eye of law and fact and liable to be dismissed.</p> <p>It is further stated that Judgment Debtor has filed both show-cause and his petition in same petition, that is not lawful. it is further stated that judgment debtor has also not given valid stamp fee for their petition. it is further stated by the ld counsel of decree holder that it is admitted by the Judgment Debtor itself that till 03-02-2014 he himself did pairvi in that original suit having Eviction suit no-88/2013 and there after record has been transferred to Narkatiaganj then he filed no any pairvi in that Eviction suit. It further stated by Ld. Counsel of decree holder that in original suit of Eviction 88/2013 Defendant have filed his written statement which was accepted by the court with cost of 500/- wide dated 02.06.2014 and defendant did not comply the order of Ld. court and also not produce any evidence in support of his written statement. further the judgment debtor have not complied court decree dated 06-02-2919 in which defendant was</p>	
---------------------------------------	--	--

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p><b>Continue 27.08.2024</b></p>	<p>directed to hand over the possession to the decree holder and also to pay due rent to the plaintiff with in 60 days from date of the Decree. Further stated by ld counsel that when plaintiff objected to judgment debtor from demolishing the house and construction over it, then judgment debtor refused to stop the said work and there after decree holder filed a case with mainatar PS case no. 34/2019 which is pending in bettiah Court.</p> <p>Certified copy of FIR has also been given by the Decree Holder</p> <p>Further stated by the Ld counsel of Decree holder that para-4 of the Judgment Debtor is false and fabricated and lastly prayed for dismissal of the petition dated 23-01-2020.</p> <p>Heard the Ld. Counsel of both side and perused the record.</p> <p>Order-21 Rule-26 When Court may Stay Execution:-</p> <ol style="list-style-type: none"><li>1. The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the Execution of such decree for a reasonable time, to enable the judgment- Debtor to apply to the court by which 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, or for any order relating to the decree or Execution which might have been made by such court of first instance or appellate court if execution had been issued thereby, or if application for execution had been made thereto.</li></ol>	
---------------------------------------	--	--

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p><b>Continue 27.08.2024</b></p>	<p>2. Where the property or person of the judgment – debtor has been seized under an Execution, the court which issue the execution may order the restitution of such property or the discharge of such person pending the result of application.</p> <p>3. Power to require security from, or impose condition upon, judgement –Debtor- Before making an order to stay execution or for the restitution of property or the discharge of judgment Debtor, the court shall require such security from or impose such condition upon, the judgment debtor as it think fit.</p> <p>This Rules seems to apply to four different courts. First, the court to which the order was submitted for execution, second, the court that issued the Decree and Third, the court that issued the decree. The appellate court with jurisdiction over the decree is the third, and the appellate court with jurisdiction over the execution is the fourth.</p> <p>The principle of fair time specified in the clause only apply to the first court, not the other courts. The clause only state that if adequate cause is shown, the first court shall issue a stay of execution for a limited period, the object of this reasonable time is to allow a judgment debtor to secure an injunction from one of other three courts.</p> <p>This specifically demonstrate the distinction between a court to which the decree was returned for Execution and a court to which the decree was passed. As a result, it is clear that order 21 rule 26 cpc grant of sufficient time applies only to the court to which the decision was referred for execution, not to the decretal court itself.</p>	
---------------------------------------	---	--

IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN

EXECUTION CASE NO -08/2019

SHIVJEE ARYA.....DECREE HOLDER

VS.

BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR

<p>Continue 27.08.2024</p>	<p>The provision of order-21 Rule-26 CPC does not imply that the other three court have the authority to grant a stay.</p> <p>Order 41 rule 5(1) CPC gives the appellate court to grant a stay. Order-41 Rule-5(2) CPC gives the decretal court the right to grant a stay.</p> <p>In case of <b>Judhiatir Jena Vs.Surendra Mohanty and Anr. AIR-1969 ORI233:-</b></p> <p>The primary concern is that the decree was received by a party, and he should not be denied the benefits of the decade unless there are compelling grounds to do so. Until the decree is over turned, it is in effect, and it can not be taken lightly in the event that another suit to overturn it succeeds. The declaration must be permitted to be carried out, and no stay can be issued unless an exceptional Circumstances Exists. And if a stay is issued, it must be on reasonable grounds that do not suffocate the earlier Decree.</p> <p>Honorable supreme court in <b>Ghanshyam Das Vs Anant kumar sinha AIR 1991 SC 2251</b> stated:- so far as the question of executability of a decree is concerned, the civil procedure code contains elaborate and exhaustive provisions for dealing with it in all aspects. The numeraus rules of order 21 take care of different situation providing effective remedies not only to judgment Debtor and decree-holder but also to claimant objectors, as the case may be.</p> <p>Similarly, order-21 Rule 29 of the CPC state that “where a suit is pending in any court against the holder of a decree of such court or of a decree which being executed by such court, on the part of person against whom the decree was passed, the court may ,on such terms as to security or otherwise, as think fit, stay execution of a decree until the pending suit has been decided”.</p>	
--------------------------------	---	--

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p>Continue 27.08.2024</p>	<p>In case of <b>Anop Chand And Ors Vs. Hirachand and Ors AIR 1962 RAJ223</b>. It has been stated that, according to the court, order 21 Rule-29 is based on the premise that a Judgment Debtor should not be harassed if he has a substantive claim against the Decree-holder pending before the court administering the decree. The court which reviewing the judgment-claim, Debtors has all of the information on which Judgment –claim Debtor is based, and if the court believe that claim has any merit, it may order a stay of the execution filed by the Defendant in that case, on certain terms of protection or otherwise.</p> <p>Perused the petition and show-cause filed by the judgement Debtor, upon perusal it appears that judgment debtor filed petition dated 23-01-2020 for stay of Execution suit no- 08/2019 till disposal of the Misc. Case-27/2019. it has been pleaded by the petitioner that During the Pendency of original suit i.e Eviction suit 88/2013 Munsif court Bettiah, Petitioner admitted that on dated 10-03-2014 written statement in that suit was filed by him and also till 02-07-2014 he did proper pairvi in the suit by himself and there after due to illness of his Son Abhash Kumar, he left doing proper pairavi and he appointed Advocate clerk namely Chinta mani Tiwari for doing proper pairvi in the said suit Eviction suit -88/2013 and after transfer of the suit from Bettiah to Narkatiaganj court in 2015 ,he had no information about the progress of the suit and he came to know only when decree holder asked him to stop the repairing work in the suit premises land and also came to know by obtaining certified copy of judgement that Decree Ex-parte have been passed in favour of plaintiff i.e decree-holder and against him. Thus petitioner filed this Misc. case-27/2019 to set aside ex-parte decree.</p> <p>On other side Decree-Holder stated through rejoinder that petition dated 23.01.2020 is not</p>	
--------------------------------	--	--

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p><b>Continue 27.08.2024</b></p>	<p>maintainable and liable to be dismissed as Defendant have filed his W.S on dated 10.03.2014 in the original suit i.e- Eviction suit 88/2013 and it was contested one and that was accepted by the court wide dated 02-06-2014 with cost of 500/-and In that suit Decree was made in favour of the plaintiff and In Petition also judgment debtor have not mentioned specifically about any provision of CPC under which the present petition has been filed and the petition is also not supported by an Affidavit and thus plaintiff opposed the prayer of the petitioner and stated that petition dated 23.01.2020 is not maintainable and liable to be dismissed.</p> <p>I have perused the petition of the Petitioner and rejoinder of the decree holder (Plaintiff). it appears that petitioner filed the petition dated 23-01-2020 for stay of the Execution case -08/2019 till the disposal of the Misc. case-27/2019. After perusal of Petition its appears that petition is not supported by An Affidavit nor any provision of CPC has been mentioned under which Section or order or Rule this petition has been filed for stay of the Execution suit-08/2019 till disposal of the Misc. case 27/2019.</p> <p>The main contention of the Petitioner is that, the original suit i.e Eviction suit no-88/2013 has been decreed ex-parte in absence of Defendant, but after Due perusal of the pleading of the Decree-holder and also Certified copy of Judgment and decree of original suit. i.e-Eviction 88/2013 it appears that judgment pronounced on dated 28/01/2019 in favour of the plaintiff and and it transpire that, defendant appeared in the suit and have also filed his written statement on dated 10-03-2014 and that was accepted by court dated 02-06-2014 with cost of 500/- in which he denied the pleading of the plaintiff and claimed that suit land were in name of his Grand father namely Jang Bahadur and got through a patta Dated 19.07.1945 in</p>	
---------------------------------------	---	--

**IN THE COURT OF MUNSIF, NARKATIAGANJ, WEST CHAMPARAN**

**EXECUTION CASE NO -08/2019**

**SHIVJEE ARYA.....DECREE HOLDER**

**VS.**

**BRIJKISHORE PRASAD.....JUDGEMENT DEBTOR**

<p><b>Continue 27.08.2024</b></p>	<p>his name. but He did not produced any evidence in his support and W.S during during trail and then after trail concluded, judgement was pronounced and Decreed in favour of plaintiff. judgment Debtor as directed by court , did not comply the court Decree, by not handing over the possession of the suit premises to decree holder and also did not paid the due rent in this period of 60 days from date of decree. So after due perusal, its become clear that Eviction suit no-88/2013 not decreed Ex-parte rather it was contested suit. it also appears that petition is not supported by An Affidavit nor any provision of CPC has been mentioned under which Section or order or Rule this petition has been filed for stay of the Execution suit-08/2019 till disposal of the Misc. case 27/2019.</p> <p>Accordingly, after due perusal of petition and rejoinder and also with reference to above discussed case law and also fact and circumstances of the case, and pleading of both parties to the suit, this court is of view that petition dated 23/01/2020 filed by Judgment debtor for stay of Execution case-08/2019 till disposal of Misc. Case 27/2019 if permitted then, it would directly cause prejudice to Decree-holder, accordingly petition dated 23-01-2020 hereby Dismissed.</p> <p style="text-align: center;"><b>MUNSIF NARKATIAGANJ</b></p>	
---------------------------------------	--	--