

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.24 of 2008

Sibo @ Siba Bagh

Appellant

*Mr. G.N. Sahu, Advocate appearing on
behalf of Mr. A.K. Nanda, Advocate
-versus-*

Pandit Hial

*..... Respondent
Mr. S.K. Dash, Advocate*

**CORAM:
MR. JUSTICE A.C. BEHERA**

ORDER

16.11.2023

I.A. No.1049 of 2023

Order No.

10. 1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. This I.A. has been filed on behalf of the appellant with a prayer to stay further proceeding of Execution Case No.02 of 2009 pending in the court of learned Additional Civil Judge, (Jr. Division), Bisamcuttack.
3. Heard from the learned counsels from both the sides. During the course of hearing, learned counsel for the appellant submitted that, previously at the time of admission of this 2nd appeal, a stay order was passed in Misc. Case No.254 of 2010 staying the further proceeding of E.P. No.01 of 2009. But, subsequent thereto, by applying the ratio of the decision of the Apex Court in the case *Asian Resurfacing of Road Agency Ltd.* that stay order was vacated, as that stay was continuing for more than six months. For which, the appellant has filed this I.A.

praying for staying the further proceeding of Execution Case No.01 of 2009.

4. Learned counsel for the respondent vehemently objected the same contending that, though interim order was passed on 03.05.2010 and in the meantime more than 13 years passed, still then, the appellant did not take any interest for hearing of this appeal, by taking the advantage of the order of stay granted by this Court vide order dated 03.05.2010 in Misc. Case No.254 of 2010.

5. As the E.P. No.01 of 2009 has arisen out of the judgment and decree, which is under challenged in this 2nd appeal, then, if the execution proceeding shall not be stayed during the pendency of this 2nd appeal, the main purpose for preferring this 2nd appeal shall be frustrated.

6. Therefore, by taking the above factors into account, it is felt necessary to stay the further proceeding of Execution Case No.01 of 2009 pending in the court of learned Additional Civil Judge, (Jr. Division), Bisamcuttack with a condition that, the appellant shall be ready for early hearing of this 2nd appeal, as because, the learned counsel for the respondent is always ready for hearing.

7. Therefore, the Interlocutory Application No.1049 of 2023 filed on behalf of the appellant is allowed.

8. Further proceeding in Execution Proceeding No.01 of 2009 pending in the court of learned Additional Civil Judge, (Jr. Division), Bisamcuttack be stayed till final disposal of this 2nd

appeal.

Urgent certified copy of this order be granted to the parties on their proper applications.

(A.C. Behera)
Judge

R.S.A. No.24 of 2008

11. 9. Heard.

10. It appears from the record that, though LCRs were called for but, the LCRs have not been received as yet. Therefore, learned District Judge, Rayagada is directed to transmit the photo copies of the LCRs within a week.

11. Registry is directed to take steps for issuance of letter to the District Judge, Rayagada for transmission of the photo copies of the LCRs quickly, in order to reach the same within a week before this Court and the same be tagged with the brief.

12. On consent of the learned counsels of both sides, list this appeal on 04.12.2023 for peremptory hearing.

(A.C. Behera)
Judge

Jagabandhu