



IN THE HIGH COURT OF ORISSA AT CUTTACK

C.M.P. No.393 of 2025

Goutam Arjun Chothany Petitioner

Mr. M.K. Mohapatro, Advocate

-Versus-

Gangpur Weavers Co-operative Opposite party
Spinning Mills Ltd. Spinfed Office,
Bhubaneswar & others None

CORAM:
MR. JUSTICE K. PATTANAİK

ORDER
25.03.2025

Order No.
01.

1. Heard Mr. Mohapatro, learned counsel for the petitioner.
2. No notices are issued to the opposite parties as the matter is disposed of at the stage of admission.
3. Instant petition is filed challenging the impugned order dated 27th July, 2024 passed in connection with Execution Petition No.1 of 2016 by learned Senior Civil Judge, Sundargarh as at Annexure-5, whereby, the proceeding has been dropped for having no jurisdiction to entertain the same.
4. Mr. Mohapatro, learned counsel for the petitioner refers to the order dated 8th March, 2004 of learned Senior Civil Judge, Sundargarh in M.S. No.5 of 2002 regarding transfer of the suit to the Court of 1st Adhoc Additional District Judge, Sundargarh for disposal in accordance with law. It is further submitted that the said Court disposed of the suit vide judgment & decree dated 25th January, 2006



as at Annexure-2 series in M.S. No.5/4 of 2002. The submission is that the execution proceeding was initiated in the Court of learned Senior Civil Judge, Sundargarh, but it has not been entertained followed by the impugned order i.e. Annexure-5. The submission is that the learned Court below could not have dropped the proceeding and instead was required to transfer the same to the Court concerned. But, at the same time, it is informed to the Court that the Court of 1st Adhoc Addl. District Judge, Sundargarh is no more functional. The contention is that the learned Court below being the Court of original jurisdiction is having the authority to entertain the execution proceeding but it has been dropped. In support of such contention, Mr. Mohapatro, learned counsel for the petitioner refers to Section 39 CPC. In any view of the matter, as upon a transfer to the Court of learned Adhoc Additional District Judge, Sundargarh, the suit was disposed of, a Court, which is no more functioning and hence, the execution proceeding was to be filed before the learned Court below. In other words, it has held that learned Senior Civil Judge, Sundargarh should not have dropped the execution proceeding being the court of original jurisdiction, when the Court passing the decree is no more functional. With such a conclusion, the Court is of the humble view that the impugned order i.e. Annexure-5 cannot be sustained in the eye of law and therefore, it has be set aside.

5. Accordingly, it is ordered.

6. In the result, the CMP stands allowed. As a necessary corollary, the impugned order under Annexure-5 passed in connection with Execution Petition No.1 of 2016 by learned Senior Civil Judge, Sundargarh is hereby set aside. Consequently, the Court



directs the restoration of the execution proceeding and disposal of the same by the Court below upon proper notice to the opposite parties.

7. In the circumstances, however, there is no order as to costs.
8. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge

Alok

Signature Not Verified

Digitally Signed
Signed by: ALOK RANJAN SETHY
Reason: Authentication
Location: ORISSA HIGH COURT
Date: 26-Mar-2025 20:25:05

