



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.509 of 2026

Dhadu Pradhan and others

.....

Petitioners

Represented by Adv. -
Himanshu Bhusan Dash

-versus-

Nabaghana Ganguly

.....

Opposite Parties

Represented by Adv. -

CORAM:

**THE HON'BLE MR. JUSTICE ADITYA KUMAR
MOHAPATRA**

ORDER

25.03.2026

Order No.

- 01.
1. This matter is taken up through Hybrid mode.
 2. Heard learned counsel for the Petitioners. Perused the CMP application as well as the prayer made therein.
 3. The defendant in T.S. No.105 of 1990 which was disposed of by the learned Civil Judge, Junior Division, Pipili and who happens to be the appellant in RFA No.01 of 2022 pending before the learned 2nd ADJ, Puri has approached this Court challenging the inaction of the First Appellate Court in disposing of the application of the Petitioners filed under Order-41 Rule-5 of CPC.
 4. Learned counsel for the Petitioners at the outset contended that the defendant filed a suit for declaration and permanent injunction. He further contended that the suit was decreed in favour



of the plaintiff. Thereafter, an execution case has been started at the instance of the plaintiff for execution of the decree in favour of the plaintiff. The defendant-Petitioners in the meantime preferred an appeal before the learned First Appellate Court which was registered as RFA No.01 of 2022. He further submitted that along with the appeal he has also filed an application under Order-41 Rule-5 of CPC with a prayer for stay of further proceeding in the execution case. In course of his argument, learned counsel for the Petitioners, referring to order dated 29.01.2026 at Annexure-6, submitted before this Court that the application filed under Order-41 Rule-5 of CPC has been posted for hearing on 20.03.2026. He further contended that in the meantime the execution proceeding is continuing. The learned Civil Judge, (JD), Pipili, who is the Executing Court in Execution Case No.01 of 2023 arising out of T.S. No.105 of 1990, has passed an order on 21.02.2026, thereby issuing warrant to the bailiff and awaiting the report of the bailiff, the matter has been posted to 02.03.2026. On such ground, learned counsel for the Petitioners contended that in the event the execution case is allowed to proceed further the appeal preferred by the Petitioners, will become infructuous.

5. Taking into consideration the aforesaid facts, this Court observes that the regular first appeal is pending before the First Appellate Court and in that case the Petitioners have already moved an application for stay of the further execution proceeding, which has not been decided on its own merit. However, in the meantime, the execution case is proceeding. In view of the aforesaid position, this Court disposes of the present CMP application by directing the learned First Appellate Court to make every endeavor to consider



and dispose of the application of the Petitioners filed under Order-41 Rule-5 of CPC within a period of four weeks from the date of communication of a copy of today's order. As an interim, it is directed that the further proceeding in the execution case shall remain stayed for a period of four weeks or till disposal of the application by the learned First Appellate Court, whichever is earlier.

6. With the aforesaid observations/directions, the CMP application stands disposed of.

(Aditya Kumar Mohapatra)
Judge

S.K. Rout