



IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No.2007 of 2025

***Divya Aich @ Divya Archana
Aich & Ors.***

.....

Petitioners

Represented by Adv. -
Amit Prasad Bose

-versus-

***Dillip Kumar Nayak &
Ors.***

.....

Opposite Parties

Represented by Adv. - M/s
Rajjeet Roy, R.routray,
B.n.rath,s.sourav, A.gajendra,
T.p.tripathy,a.patnaik

CORAM:

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

ORDER

26.02.2026

Order No.

- 02.
1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
 2. Heard learned counsel appearing for the Petitioners as well as learned counsel appearing for the Opposite Parties. Perused the CMP application as well as the prayer made therein.
 3. By filing the present CMP application the JDRs in Execution Petition No.121 of 2025 which arises out of CS No.174 of 2023 and who is also the appellant in RFA No.158 of 2025 which is pending before the learned District Judge, Khurda, at Bhubaneswar has approached this Court by invoking the jurisdiction of this Court under Article 227 of the Constitution of India with a prayer to set aside order dated 06.12.2025 at Annexure-1 passed by the learned



Civil Judge, (Senior Division) Bhubaneswar in Execution Petition No.121 of 2025. He has also made a further prayer for disposal of the CMA No.647 of 2025 which has been filed for restoration of CS No.174 of 2023 pending before the very same Court. By virtue of the impugned order dated 06.12.2025 at Annexure-1, the learned Civil Judge, (Senior Division) Bhubaneswar, who happens to be the Executing Court, has passed an order rejecting the objection of the JDRs filed under Section 47 of the CPC.

4. Learned counsel for the Petitioners at the outset contended that initially the Petitioners as plaintiffs filed a suit for declaration of right, title, interest along with permanent injunction. The defendants after their appearance filed a counter claim. He further submitted that the suit filed by the plaintiffs-Petitioners got dismissed due to non-prosecution. However, the counter claim was taken up independently and there a decree has been passed against the plaintiffs. As against such decree in the counter claim, the plaintiffs have preferred a 1st Appeal before the learned District Judge, Khurda at Bhubaneswar by filing RFA No.158 of 2025.

5. Learned counsel for the Petitioners at this juncture contended that the plaintiffs are seriously prejudiced as the execution case arising out of the counter claim as against which the plaintiffs' 1st appeal is pending, is proceeding. He further submitted that although the JDRs-appellants before the First Appellate Court moved an application raising objection under Section 47 of the CPC. However, the same has been rejected by order dated 06.12.2025 without assigning any specific reason. Being aggrieved by such continuance of the execution proceeding and on the part of the learned Executing Court to consider the objection of the present



Petitioners, the Petitioners have approached this Court by filing the present writ application.

6. Learned counsel for the Opposite Parties on the other hand contended that the suit filed by the Petitioners as plaintiffs has been dismissed since long and although an application has been filed for restoration, however, no steps have been taken to ensure that the suit is restored to file. He further contended that so far the counter claim of the Opposite Parties are concerned, the same was decreed in their favour and, accordingly, they have levied an execution case before the Executing Court. He further submitted that although the Petitioners have preferred an appeal against the decree in the counter claim, however, there are defects and that the appeal has not yet been admitted. He further submitted that the Petitioners have failed to obtain any interim order from the First Appellate Court with regard to the stay of the further proceeding in the execution case. Accordingly, the learned counsel appearing for the Opposite Parties contended that the learned Executing Court has not committed any illegality in proceeding with the execution case after rejecting the objection filed by the Petitioners under Section 47 of the CPC. In such view of the matter, learned counsel for the Opposite Parties contended that the learned Executing Court has not committed any illegality in passing order dated 06.12.2025 in Execution Petition No.121 of 2025 which arises out of CS No.174 of 2023. It was also contended that the Petitioners preferred RFA No.158 of 2025 before the learned District Judge, Khurda at Bhubaneswar after passing the order dated 06.12.2025 which has been assailed in the present CMP application.

7. Having heard the learned counsels appearing for the



respective parties, on a careful analysis of the submissions, further on a careful analysis of the factual background of the present case, this Court observes that the JDRs in Execution Case No.121 of 2025, who happens to be the appellants before the learned First Appellate Court, have approached this Court by challenging order dated 06.12.2025 whereby their objection has been rejected by the learned Executing Court. On perusal of order dated 06.12.2025, it appears that no specific reason whatsoever has been given by rejecting the objection filed by the JDRs. In course of hearing, learned counsels appearing for both sides agreed that they shall both appear before the learned First Appellate Court facilitating the learned First Appellate Court take up the appeal for admission and for consideration of the interim application filed by the appellant. In such view of the matter, the parties are directed to appear before the learned First Appellate Court on 10.03.2026 along with a copy of today's order. Since the learned counsel appearing for the Opposite Parties represents the respondents in the appeal, no separate notice is required to be given to such respondents in view of the undertaking given by learned counsel appearing for the opposite parties, who are respondents in the appeal. On their appearance, the learned First Appellate Court shall take up the appeal, subject to removal of the defects by the appellants, for admission. Learned counsel for the Petitioners undertakes to remove all defects before the 10.03.2026. Along with the appeal, the learned First Appellate Court shall also take up the interim application for consideration. In view of the aforesaid direction, liberty is granted to the Petitioners to move an application before the learned Executing Court seeking adjournment of the Executing Proceeding for a period of three weeks and, in such eventuality, the



learned Executing Court shall adjourn the execution proceeding for a period of three weeks. The further proceeding in the execution proceeding thereafter shall be subject to whatever orders to be passed by the learned First Appellate Court.

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

(A.K. Mohapatra)
Judge

Anil