

Orissa High Court

The Executive Officer, Balasore ... vs Shri Harimohan Sahu on 7 March, 2002

Equivalent citations: 2002 I OLR 556

Author: P Tripathy

Bench: P Tripathy

JUDGMENT P.K. Tripathy, J.

1. Heard.

2. The decree-holder/Opposite party and the judgment-debtor/ petitioner are some persons in all the three proceedings.

Civil Revision No. 372 of 2001 is against the order dated 3.10.2001 in Misc. Case No. 398 of 2001 registered on an application under Order XX Rule 11, CPC at the instance of judgment-debtor/petitioner in Execution Case No. 17 of 1997 of the Court of Civil Judge (Senior Division), Balasore. Civil Revision No. 373 of 2001 is against a similar order of even date of the same Court in Misc. Case No. 397 of 2001 arising out of Execution Case No. 18 of 1997 and Civil Revision No. 374 of 2001 is also against a similar order of even date by the same Court in Misc. Case No. 399 of 2001 arising out of Execution Case No. 16 of 1997. Petitioner challenged these orders in the Court of District Judge, Balasore and vide the impugned order dated 19.10.2001 respectively in Misc. Appeal Nos. 108, 109 and 107 of 2001, learned District Judge dismissed the said appeals on the ground that the discretion not exercised by the lower Court in favour of the petitioner is not liable to be interfered with. What orders are appellable, that has been provided in Rule 1 of Order XLIII CPC. It is not disputed at the bar that an order passed under Order XX Rule 11 CPC is not an appellable order. In that respect, letter No. 985 dated 1.3.2002 of the District Judge, Balasore, shall be separately dealt with. For the purpose of the record it is observed that the impugned order under Order XX Rule 11 CPC passed by the Civil Judge are not appellable orders and therefore registering appeals against such orders is absolutely wrong.

3. Because the parties to the proceeding are same and relief claimed is similar in each of the aforesaid execution proceedings therefore, on the prayer of the parties all the three civil revisions are heard analogously and disposed of by this common order.

4. Learned Counsel for the petitioner fairly states that though the impugned order passed by the Civil Judge were not appealable and the revision applications lie in the Court of the District Judge, Balasore, but without looking to the relevant provision in the Code such Misc. Appeals were filed and pursued by the petitioner. He further states that, as per the interim order of this Court some amounts have already been paid to the opposite party/decreed-holder in the aforesaid Execution proceedings and the remaining amount, if opportunity shall be allowed, shall be cleared up by 15.5.2002 and with such observation all the three revisions be disposed of. Learned Counsellor the opposite party/decreed-holder states that if the judgment-debtor/petitioner shall give written undertaking and clear up the entire amount including the interest which is due in accordance with the decree, then he agrees to the aforesaid proposal. Learned counsel for the petitioner states that petitioner agrees to the aforesaid contention of the learned counsel for the opposite party.

5. In view of that, it is ordered that, no coercive action shall be taken against the petitioner/judgment-debtor till 15.5.2002 if the petitioner shall file an affidavit, within a period of one week hence, in each of the Execution Case giving specific undertaking for making payment of all the outstanding decretal dues including the interest accrued thereon as per the terms of the decree by 15th May, 2002. In the event petitioner shall fail to swear and file such affidavits, it is open to the Executing Court to proceed with the execution proceeding in accordance with law. In the event petitioner shall fail to pay in spite of the aforesaid undertaking, the concerned Executive Officer of Balasore Municipality (who shall swear such affidavits) may be proceeded against in accordance with law both for civil and/or criminal liability for breach of such undertakings.

The Civil Revisions are disposed of with the aforesaid directions.