

(2019) 07 JH CK 0066

Jharkhand High Court

Case No: Miscellaneous Application No. 291 Of 2018

Divisional Manager, MAGMA
HDI, General Insurance Co. Ltd.
Registered Office Magma House,
Kolkata

APPELLANT

Vs

Anita Devi And Ors

RESPONDENT

Date of Decision: July 1, 2019

Hon'ble Judges: Rajesh Kumar, J

Bench: Single Bench

Advocate: Alok Lal, Santosh Kumar, Sandip Kr. Burnwal

Final Decision: Dismissed

Judgement

I.A. No. 5097 of 2019

The instant interlocutory application has been filed for setting aside the order dated 09.05.2019 passed by the Executing Court in Execution Case

No.53 of 2018.

It appears that earlier an interlocutory application being I.A. No. 6696 of 2018, has been filed for stay of further proceeding of Execution Case No. 53

of 2018 pending in the court of District Judge VIII, Dhanbad. This Court, vide order dated 02.08.2018 has granted stay of further proceeding, on

condition of release of Rs. 55 lakhs in favour of the claimant-respondents.

It appears that in spite of stay of further proceeding of Execution Case No.53 of 2018, the Executing Court vide order dated 09.05.2019 vacated the

order passed by this Court which is contrary to law.

A report has been called for by this Court vide order dated 14.06.2019. In compliance of the same, report has been received wherein it has been reported by the court below that the vacation order has been passed, in view of Letter No. 253/R&S dated 23.07.2018 issued by this Honâ€™ble

High Court. The issue has been settled in the case of General Manager & Anr. Vs. Basant & Ors reported in 2019 SCC On Line MP 234.

Otherwise also, it is settled law that by administrative order, judicial order cannot be changed.

Para-35 of the judgment of the Apex Court in case of M/S Basava Agro World Vs. M/S International Tractors Ltd. reported in AIR 2018 SCC is

quoted hereinbelow:-

â€œIn view of above, situation of proceedings remaining pending for long on account of stay needs to be remedied. Remedy is required not only for

corruption cases but for all civil and criminal cases where on account of stay, civil and criminal proceedings are held up. At times, proceedings are

adjourned sine die on account of stay. Even after stay is vacated, intimation is not received and proceedings are not taken up. In an attempt to remedy

this, situation, we consider it appropriate to direct that in all pending cases where stay against proceedings of a civil or criminal trial is operating, the

same will come to an end on expiry of six months from today unless in an exceptional case by a speaking order such stay is extended. In cases where

stay is granted in future, the same will end on expiry of six months from the date of such order unless similar extension is granted by a speaking order.

The speaking order must show that the case was of such exceptional nature that continuing the stay was more important than having the trial finalized.

The trial Court where order of stay of civil or criminal proceedings is produced, may fix a date not beyond six months of the order of stay so that on

expiry of period of stay, proceedings can commence unless order of extension of stay is produced.â€

In view of above judicial pronouncement and the order of Apex Court, it is evident that the above direction of the Apex Court is not with regard to the

execution proceeding, rather it is applicable on pending proceedings of a civil or criminal trial.

In view of above judicial pronouncement and discussion, the order dated 09.05.2019 passed in Execution Case No. 53 of 2018 by District Judge-VIII,

Dhanbad, is hereby, quashed.

During pendency of the present Miscellaneous Appeal, Interim order granted earlier by this Court on 02.08.2018, shall continue.

Accordingly, I.A. No. 5097 of 2019 stands disposed of.