
(2025) 10 JH CK 0062

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 180 Of 2023

Laxmi Ram, son of
Kutuhai Ram

APPELLANT

Vs

Baldev Yadav

RESPONDENT

Date of Decision: Oct. 16, 2025

Acts Referred:

- Code of Civil Procedure, 1908 — Section 104, Order 43

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Amar Kumar Sinha, Mukesh Kumar Sinha, Abdul Wahab, S.N. Das, S.K. Murthy

Final Decision: Allowed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner is the judgment debtor and is aggrieved by the order dated 12.12.2022 passed by Principal District Judge in Civil Miscellaneous Appeal No.8 of 2018, whereby and whereunder Principal District Judge, Giridih has set aside the order dated 13.09.2018 passed by the learned Civil Judge (Senior Division)- I, Giridih in Execution Case No.9 of 2010.

2. The facts are not in dispute that the execution case filed by opposite party no.1 being Execution Case No.9/2010 arising out of Title Suit No.72/1986, was dismissed by the executing court. Aggrieved by the said dismissal, opposite party no.1 preferred Civil Miscellaneous Appeal No.8 of 2018 which has been allowed by the Principal District Judge vide order dated 12.12.2022, is under challenge in the instant civil miscellaneous petition.

3. It is argued by the learned counsel on behalf of petitioner that miscellaneous appeal against an order is maintainable before the District Judge only under Order XLIII read with Section 104 of the CPC. Dismissal of an execution case on merit is not amenable to challenge before the District Judge. The order passed is without jurisdiction therefore, fit to be set aside.

4. The short question raised at Bar in the instant civil miscellaneous petition preferred by the judgment debtor against the order dated 12.12.2022 passed by the Principal District Judge, Giridih is that can a decree holder whose execution case has been dismissed on merit, move before the District Judge in appeal against the order of dismissal?

5. Learned counsel on behalf of opposite party no.1 submits that the learned executing court erred in dismissing the execution case against which the appeal was preferred however, he has fairly conceded that the order is not appealable under Order XLIII of the CPC. In this view of the matter, the impugned order is set aside.

Civil Miscellaneous Petition is allowed. However, the opposite parties will have liberty to work out legal remedy before an appropriate forum. Pending Interlocutory Application, if any, is disposed of.