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**(2017) 01 JH CK 0233**  
**JHARKHAND HIGH COURT**  
**Case No:** 3828 of 2008

Ravinder Singh Mand &  
Ors.

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** Jan. 9, 2017

**Acts Referred:**

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Code of Civil Procedure, 1908, Order 21 Rule 97

**Hon'ble Judges:** Aparesh Kumar Singh

**Bench:** SINGLE BENCH

**Advocate:** Kaushik Sharkel, Nityanand Prasad Choudhary

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**Judgement**

**1.** Heard learned counsel for the parties.

**2.** Execution Case No. 6/2007 was being prosecuted by the Respondents who were the decree holders of the Title (Partition) Suit No. 28/1994 vide judgment dated 27.5.2005 and final decree dated 22.2.2007. Petitioner herein filed an application under Order 21 Rule 97 of the Civil Procedure Code taking an objection to the execution of the decree. Petitioner claimed that his natural father namely Sarju Hasda had given him in adoption to Dashrath Hasda. However, learned counsel for the petitioner submits that averment recorded in the opening paragraph of the impugned judgment suffers from error on record on that score where it has been erroneously recorded that applicant, Thakur Hansda was adopted by plaintiff Mukhudi Hemhram.

**3.** Despite knowledge of such adoption and filing of written statement in the title suit by Sarju Hasda, present petitioner was not impleaded as necessary party in the title suit. He

therefore sought to object by way of an application under Order 21 Rule 97 of the Civil Procedure Code which was accepted by learned Executing Court. In the miscellaneous case being Misc Case No. 2/2007, he filed an application to exhibit a document said to be the written statement filed by Sarju Hasda where under the factum of his adoption by Dashrath Hasda was averred. Learned Court of Sub Judge-1, Jamtara by the impugned order dated 28.4.2008 has however rejected the same. Learned Executing Court has considered the rival pleas of the parties on such application and came to an opinion that the written statement filed by Sarju Hasda in Title Suit No. 28/94 was not in terms of the directions passed by the Appellate Court in Title Appeal No. 13/1997/75/2001 where under the matter was remanded to the Trial Court for adjudication. The Defendant, Sarju Hasda had to file written statement within a period of 30 days with cost of Rs.1000/-. Neither was the written statement filed in the Trial Court after remand within 30 days nor was the cost paid. Filing of the written statement thereafter had no sanctity and was treated as nil document which did not have any relevancy to be adduced as an exhibit on the part of the objector/ petitioner herein.

4. Learned counsel for the petitioner submits that relevancy of the document sought to be executed were not required to be gone into at the stage of its exhibition, which could be considered at the time of final adjudication by the learned Trial Court. Petitioner wanted to show that despite knowledge of the fact that he is adopted son of the Dashrath Hasda on receipt of such written statement by them, he was consciously not impleaded as Defendant in the title suit, though he had necessary stake in the matter. Therefore, the decree could not be executed against him. It is submitted that the learned Executing Court made an error in refusing to allow exhibition of the document on the part of the petitioner in the miscellaneous case.

5. Learned counsel for the petitioner has relied upon judgment rendered by the Apex Court in the case of Bipin Shantilal Panchal Vrs. State of Gujarat reported in (2001)3 SCC 1 and in the case of Parmeshwar Rana & others Vrs. Dwarika Rana reported in [2011 (3) JCR 11(Jhr)] rendered by this Court in support of his submission.

6. Learned counsel for the Respondent submits that learned Executing Court has considered the plea of the petitioner and upon spacious grounds recorded in the impugned order found no reason to allow exhibition of the document which was never officially taken on record in the title suit. The written statement filed more than 2 year after expiry of 30 days period by Sarju Hasda has no relevance for adjudication of the miscellaneous case. Therefore, it has rightly been rejected by the learned Executing Court.

7. I have considered submission of the parties in the light of relevant material facts pleaded. Whether filing of the written statement by Sarju Hasda was in terms of the directions passed by the Appellate Court while remanding the suit to the learned Trial Court and that the written statement sought to be exhibited by the petitioner herein in the

miscellaneous case had any relevance or legal sanctity to the issue required to be decided by the Executing Court on an objection made under Order 21 Rule 97 of the Civil Procedure Code was not a consideration which should have weighed upon by the learned Executing Court while allowing or refusing adducing of the said document on the part of the objector. It was open for the learned Executing Court to make any such notice of objection by the other party and form its opinion on the relevancy of the document at the time of final judgment of the case.

**8.** The practice of passing a detailed order, allowing or rejecting the objection and consequential leading to suspension of trial on account of journey to the higher Court would not be a proper course to be adopted during the proceedings of any such trial. Reliance may be placed upon the judgment rendered by the Apex Court in the case of Bipin Shantilal Panchal (supra). It is always open to the learned Trial Court / Executing Court in any such matter to test the sustainability of the objection or otherwise to form an opinion on the relevancy of the document at the time of final adjudication. The learned Trial Court while passing the impugned order has however exceeded its jurisdiction in observing at length on the question of relevancy of the document. As a result, the proceedings in the execution case has remained stalled on account of the challenge laid by the petitioner before this Court and interim order passed earlier.

**9.** However, upon consideration of the issue involved in the light of the law on the subject, this Court is of the opinion that the impugned order dated 28.4.2008 requires interference under Article 227 of the Constitution of India. Accordingly, it is quashed. Learned Executing Court would now proceed in the matter and pass fresh order on application of the petitioner for adducing evidence. Needless to say, as has been observed herein above as well, it would always be open to the learned Court to form an opinion about the relevancy of the document at the time of adjudication of the miscellaneous case. However, since the proceedings of the execution case have remained pending since 2007, learned Executing Court would make endeavour to decide the miscellaneous case No. 2/2007 and the Execution Case No. 6/2007 within reasonable time, preferably 4 months.

**10.** The writ petition is allowed in the aforesaid manner. Let the Lower Court Records be sent to the concerned Court below forthwith.