

**Serial No. 40**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

CRP No. 17 of 2022

Date of Decision: 31.10.2022

Smti Birda Rapsang

Vs.

Smti Arky Marbaniang

**Coram:**

**Hon'ble Mr. Justice H. S. Thangkhiew, Judge**

**Appearance:**

For the Petitioner(s)

:

Mr. K.S. Kharshiing, Adv.

For the Respondent(s)

:

Ms. M. Iawsai, Adv.

- |     |   |        |
|-----|---|--------|
| i)  | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press:          | Yes/No |

**JUDGMENT AND ORDER (ORAL)**

1. This revision application has been filed under Article 227 of the Constitution impugning the order dated 24.02.2022, by which the Court of the Additional Judge, District Council Court, Shillong has stayed the proceedings in the Execution Case for execution of the Decree in the Title Suit No. 21 of 2013, wherein the Executing Court had fixed 22.04.2022, as the date of execution.

2. Mr. K.S. Kharshiing, learned counsel for the petitioner submits that predecessors in interest of the petitioner had instituted a suit being Title Suit No. 21 of 2013 against the respondent for eviction of the defendant, or persons claiming under them from Stall No. 1, (suit property) which has been described in the Schedule of the said Plaint. He further submits that in spite of receipt of summons, as the respondent did not contest the Suit, the same proceeded ex parte and a decree was passed on 24.02.2016. Against this judgment and decree, an appeal was preferred before the Court of the Judge, District Council Court being Title Civil Appeal No. 1 of 2016, which he submits came to be dismissed by order dated 10.02.2020, and in the said order itself, the Trial Court was directed to proceed with the Execution case. Subsequently, he submits the Execution Case being No. 4 of 2020, was filed for execution of the decree and on notice being served, the respondent filed an objection thereto, which also came to be dismissed by order dated 24.02.2022 by the Executing Court.

3. The learned counsel further submits that after disposal of the said objection, the respondent then filed an appeal which was numbered as No. 4 of 2022 before the Court of the Additional Judge, District Council Court, Shillong who passed the impugned order which has been assailed herein. The learned counsel submits that the order is totally without jurisdiction, inasmuch as, in the main appeal before the Judge, District Council Court, which had decided the matter on

10.02.2020, it was directed therein that the Execution Case shall proceed. He further submits that the order has re-opened the matter, which has already been decided, as such the same deserves to be interfered with by this Court in exercise of the powers under Article 227 of the Constitution.

4. Ms. M. Iawsai, learned counsel for the respondent has raised several objections, one of which being the executability of the decree. It is her contention, that the decree for which the execution is sought does not pertain to the shop which is in the possession of her mother. She has also touched on the merits of the matter, which this Court is not inclined to enter into, as the same is not under challenge herein and concerns the issues, which should have been gone into at the time of adjudication of the Title Suit itself. She has further drawn the attention of this Court to a counter Suit has been filed by the respondent before the Trial Court, being Title Suit No. 25 of 2020, and the same as per her submission, is at the stage of framing of issues. She also submits that the judgment and decree obtained in the other Title Suit has been mentioned in the pleadings.

5. Heard the learned counsel for the petitioner and examined the materials on record. The pointed challenge is to the stay accorded by the Court of the Additional Judge, District Council Court of the Execution proceedings, which he submits is without jurisdiction. On consideration thereof, though valid points have been raised by the

learned counsel for the petitioner assailing the legality of the impugned order, the fact that cannot be ignored is that the same, is only interim in nature and pending final hearing. The submissions of the learned counsel for the petitioner is noted, that the order that had been passed by the Additional Judge, District Council Court, was without referring to the proceedings that culminated in the Execution Case. As noted earlier, as the order is only interim in nature, this Court deems it fit to dispose of this revision application with the direction that, the Court of the Additional Judge, District Council Court shall dispose of Misc. Civil Appeal No. 4 of 2022, preferably within a period of 4(four) weeks, from the date of a certified copy of this order, is presented before the said Court. It is further directed that in the consideration of the Appeal, the learned Court below shall give its adequate attention in considering the proceedings that has culminated in the Execution case.

6. Registry to transmit back the Lower Court case records immediately.

7. With the foregoing directions, this matter stands closed and is accordingly disposed of.

**JUDGE**

Meghalaya  
31.10.2022  
"V. Lyndem-PS"