

**IN THE HIGH COURT OF ORISSA AT CUTTACK****EXECUTION CASE NO. 2 OF 1997**

In the matter of an application under Order XLV Rule 15 of the Code of Civil Procedure.

**Udayanath Sahoo (Dead) represented by Decree Holders
LRs. & Anr.**

-Versus-

State of Odisha & Others Judgment Debtors

Advocates appeared in this case:

For Decree Holders: Mr. G. Mukharjee, Sr. Advocate with
M/s. P. Mukharjee, B. Mishra, J. Rath,
S. Pattnaik, M.K. Majumdar, N.K. Shit
& S. Panigrahi, Advocates

For Judgment Debtors: Mr. D. Lenka,
Addl. Government Advocate

CORAM:

THE HON'BLE MR. JUSTICE DIXIT KRISHNA SHRIPAD

J U D G M E N T

Date of hearing :25.08.2025 :: Date of judgment :08.09.2025

PER DIXIT KRISHNA SHRIPAD,J.

Way back in the year 1872, the Privy Council in *The General Manager of the Raja Durbhunga v. Maharaja Coomar Ramaput Sing*,¹ observed that the actual difficulties of a litigant in India begin, when he has obtained a decree. The unhappy scenario has not much changed since then

¹ 1872 SCC OnLine PC 16



to this day. The Apex Court in ***Rahul S. Shah v. Jitendra Kumar Gandhi***,² has expressed its anguish against enormous delay being brooked, more particularly in cases relating to execution of decrees. In the case at hand, nearly five decades having lapsed in the court corridors, not even a fig leaf has fallen into the pocket of Decree Holders. Delayed justice is egregious form of human rights violation. At least, as a concession to shortness of human life, litigation longevity needs to be shortened, by devising new techniques. It is high time that the stakeholders converge their ideas to achieve it.

2. The prayer column in the Execution Case is coined as under:

“It is therefore prayed that the Judgment Debtors may be called upon to implement the directions given by the Hon’ble Supreme Court by identifying the incut trees and in the event this Hon’ble Court is pleased to hold that the trees so identified by the Judgment Debtors should not be cut to avoid ecological imbalance, the Judgment Debtors may be directed to supply equal quantity of logs to the Decree Holders from any of the Depots of the Forest Department in the State. Costs of the execution may also be ordered to be recovered from the Judgment Debtors;”

3. **Foundational fact matrix:**

3.1. This case has a checkered history and there is no need to pen all that here, since it is only the title facts that give rise to rights & obligations; therefore, the same are concisely stated. It is pertinent to prelude that the episode began before the Forest Conservation Jurisprudence was being evolved by the Apex Court, precedent by precedent, vide Godavarman Thirumulkpad cases. Even, the Forest Conservation Act, 1980 was yet to be enacted.

² (2021) 6 SCC 418



3.2. One Shri Udayanath Sahoo and another Shri R.S. Bhatia, were the licensed forest contractors. This was way back in the second half of 1970s. Bhatia had taken lease of 'Dudhiani F.S. 3 WC Coupe No.III, Lot No.4' vide D.L. No.76 of 1975-76, being the highest bidder in a public auction held by Divisional Forest Officer, Karanjia Division, as it then was. He having committed default, the contract was terminated and thereafter in a subsequent public auction, the same was awarded to Sahoo vide D.L. No.60 of 1977-78. Accordingly, lease was also confirmed in his favour. Bhatia challenged termination of his contract and its award to Sahoo in OJC No. 826 of 1977, which came to be allowed, vide order dated 26.04.1978. As a consequence, Shri Bhatia regained his contract, yielding nothing to Shri Sahoo.

3.3. Being aggrieved, Sahoo filed Civil Appeal No.62 of 1979 and the State too moved Civil Appeal No. 63 of 1979 laying a challenge to the above order of this Court. A settlement was arrived at between Sahoo & Bhatia, in terms of which Civil Appeal No. 62 of 1979 came to be disposed of by the Apex Court vide Common Order dated 27.03.1992, Civil Appeal No. 63 of 1979 having been negatived.

3.4. Shri Sahoo & Shri Bhatia filed Contempt Petition Nos.273 & 274 of 1993 seeking compliance of the above order of Apex Court, their representations to the State Government & its officials made in that respect having borne no fruit. The State moved I.A. Nos.2 & 3 of 1993 in the disposed of Civil Appeals seeking modification of the order dated 27.03.1992 contending that the felling of trees inside a sanctuary was impermissible under Section 29 of the Wildlife Protection Act, 1972. The Contempt Petitions & these two Applications, having been heard together,



came to be negated vide order dated 28.01.1994. The operative portion of same has the following text:

“We do not propose to proceed any further in these contempt petitions. Proceedings are dropped, contempt petitions are dismissed and I.A. No.2 & 3 are rejected. Parties may work out their rights in the appropriate forum.”

3.5. Shri Sahoo & Shri Bhatia have filed this Execution Case at hand for enforcing the Apex Court order dated 27.03.1992 against the State & its officials. A Coordinate Bench of this Court, vide order dated 04.11.1997, directed issuance of notice. Sahoo having died, his LRs are brought on record. After personal service of notice on 20.07.1998, the Judgment Debtors entered appearance through the learned AGA. OP No.2 filed his affidavit on 03.12.2021. OP No.3 has filed his affidavit on 20.08.2025, pursuant to another Coordinate Bench order dated 14.07.2025.

4. Submissions made on behalf of Decree Holders:

4.1. The Apex Court order dated 27.03.1992 is founded on a settlement between the parties and at no point of time during the pendency of Civil Appeal Nos.62 & 63 of 1979, any objections were raised by the Judgment Debtors and therefore, the obligation arising under the settlement binds them. It is more so because their Application Nos.1 & 2 of 1993, that were filed for the modification of said order on the ground that the settlement could not be implemented, in view of the bar enacted in the Wild Life Protection Act, 1972 & the Forest Conservation Act, 1980, came to be rejected vide order dated 28.01.1994.

4.2. The Apex Court dismissed Decree Holders' Contempt Petitions by the same order specifically stating that they should work out their rights in



appropriate forum. Their Execution Case No.3 of 1995 came to be rejected by the learned Civil Judge, Karanjia vide order dated 22.02.1997 allowing Judgment Debtors' Miscellaneous Case No.1 of 1996. There is absolutely no impediment, legal or factual for implementing the Apex Court order through this execution.

4.3. It is the constitutional duty of every authority to facilitate the implementation of Apex Court order, whether it is a party or not. When party, it has no option but to comply with. If specific execution is not possible, alternate relief may be granted to the Decree Holders to restore their faith in the judicial process. Lastly, costs of the execution process should also be reimbursed to them.

5. Contentions advanced on behalf of Judgment Debtors:

5.1. The Execution Petition in its present form & substance is not maintainable. To the settlement on which Apex Court order dated 27.03.1992 is founded, Judgment Debtors are not signatories and therefore, they are not bound by it. A decree founded on compromise is nothing more than a contract with the seal of Court and therefore, the doctrine of privity of contract is invokable.

5.2. The Apex Court order has become incapable of enforcement, because of *nova causa interveniens*, i.e., the Forest Conservation Act, 1980 coupled with **T.N. Godavarman** rulings that prohibit felling of trees. The Judgment Debtors, in all fairness, had offered to pay back Decree Holders' money; however, they refused to accept the same.



5.3. The subject order requires certain compliances as preconditions to levy execution. The Decree Holders having not complied the same, i.e., failing to pay the amount, the order is not enforceable.

5.4. The time being essence of contract in terms of Rule 7 of the Forest Contract Rules, 1966, the lapse on the part of Decree Holders disentitles them to execution. Even otherwise, there is frustration of contract on which the subject order is structured and therefore, the petition should be dismissed.

6. Both the sides, having filed brief Written Submissions, relied upon the following rulings in support of their respective stand:

6.1. Rulings pressed into service by the learned counsel appearing for the Decree Holders:

- (i) Dr. Poornima Advani & Anr. v. Government of NCT & Anr., 2025 INSC 262.
- (ii) Rahul S. Shah v. Jitendra Kumar Gandhi, (2021) 6 SCC 418.

6.2. Rulings pressed into service by the learned counsel appearing for the Judgment Debtors:

- (i) Jai Narain Ram Lundia v. Kedar Nath Khetan, AIR 1956 SC 359
- (ii) Ganga Saran v. Ram Charan Ram Gopal, AIR 1952 SC 9
- (iii) Haji Sk. Subhan v. Madhorao, AIR 1962 SC 1230
- (iv) C.F. Angadi v. Y. S. Mrannayya, AIR 1972 SC 239
- (v) Bhavan Vaja v. Solanki Hanuji, AIR 1972 SC 1371
- (vi) Jugalkishore Saraf v. Raw Cotton Co. Ltd., AIR 1955 SC 376



7. I have heard learned counsel for the parties. I have perused the petition papers. I have also adverted to relevant of the rulings. Having done that exercise, I am inclined to grant indulgence in the matter as under and for the following reasons:

7.1. AS TO MAINTAINABILITY OF EXECUTION CASE:

(i) Decree Holders had earlier approached the Court of learned Civil Judge, Karanjia in Execution Case No.3 of 1995. However, that came to be rejected vide order dated 22.02.1997 allowing Judgment Debtors' Miscellaneous Case No.1 of 1996. It was on the ground of jurisdiction. Therefore, they have instituted this Execution Case under the provisions of Order XLV Rule 15 of CPC 1908. Rule 1 of this Order reads as under:

“R.1. “Decree” defined.- In this Order, unless is something repugnant in the subject or context, the expression “decree” shall include a final order.”

Obviously, the order made by the Apex Court on 27.03.1992, while disposing off C.A. No.62 of 1979 filed by the first Decree Holder Sahoo & C.A. No.63 of 1979 filed by the Judgment Debtors, cannot be disputed to be a ‘final order’ within the meaning of Rule 1, inasmuch as post order, nothing remained pending. Under this rule, it partakes the character of ‘decree’ by legal fiction. Added to this, Sub-Rule (1) of Rule 15 of this Order has the following text:

*“R. 15. Procedure to enforce orders of the Supreme Court.-
(1) Whoever desires to obtain execution of any decree or order of the Supreme Court shall apply by petition, accompanied by a certified copy of the decree passed or order made in appeal and sought to be executed, to the Court from which the appeal to the Supreme Court, was preferred.*

(ii) The very language of above Sub-Rules leaves no manner of doubt that both the decrees and orders of the Apex Court are executable by the Court



from which the appeal arose. There is no dispute that Civil Appeal No.62 & 63 of 1979 arose from the final order dated 26.04.1978 of this Court in OJC No.826 of 1977 filed by Bhatia. Therefore, the contention of learned AGA that this Execution Case is not maintainable, cannot be countenanced. Such a contention ill lies in the mouth of Judgment Debtors, who had successfully resisted Decree Holders' Contempt Petition Nos.273 & 274 of 1993 which came to be dismissed by the Apex Court vide order dated 28.01.1994, whereby parties were given liberty to '*work out their rights in the appropriate forum*'. If contention of the kind is agreed to, then the Decree Holders have nowhere to go and Judgment Debtors eventually would escape from their obligation with impunity, eternally. That would strike at reason, at law & at justice. Nothing more is required to bruise the Rule of Law, which is held to be a *basic feature* of the Constitution of India vide Kesavananda,³ a historic decision. After all, Court Orders are not for photo framing, but are made for implementation.

7.2. AS TO SETTLEMENT BETWEEN THE PARTIES:

(i) The facts stated in paragraph 3 above are not in dispute. Both the Decree Holders were licensed forest contractors and their *inter se* dispute came to be resolved by a settlement that was made the Rule of Apex Court vide order dated 27.03.1992 in Civil Appeal No.62 of 1979. The operative portion of this order reads as under:

“This appeal stands disposed of in view of the settlement between the two contractors, parties herein, duly signed by their counsel, placed on record. Contained therein is an obligation on the State of Orissa to identify the uncut trees. We direct the State to fulfil this obligation towards working out the settlement. No costs.”

³ (1973) 4 SCC 225



Because of recording of this settlement in C.A. No.62 of 1979, the independent challenge to OJC order of this Court by the Judgment Debtors in C.A. No. 63 of 1979 came to be dismissed.

(ii) To better appreciate what was the settlement between the parties, the terms of Memorandum of Settlement dated 27.03.1992 are reproduced below:

“1. Since the marking of the trees are not visible now, the State of Orissa should be directed to mark the balance standing trees afresh with Forest Department.

2. The four instalments required to be paid should be paid as under i.e. 50% by the appellant and 50% by the respondent. Payments already made by the parties should be adjusted against their respective shares.

3. The felling operation of the trees etc. may be done through ORISSA FOREST DEVELOPMENT CORPORATION Ltd. Which is a State Govt. undertaking concerned and the operation expenses will be borne by the Appellant and respondent equally.

4. After operation of the coupe, the timbers and firewood will be divided equally after taking into account the quantity of timber fire wood already removed by the Appellant Uday Nath Sahu and the appellant and respondent will take delivery of the materials and they will remove their forest materials on the strength of coupe permits to be issued by Forest Department in favour of appellant and respondent separately.”

7.3. AS TO DOCTRINE OF PRIVACY OF CONTRACT:

(i) It is true that the said settlement, was essentially between Decree Holders. However, without certain things being accomplished from the side of Judgement Debtors, the said settlement would lose its efficacy. Therefore, the Apex Court, after examining the same, specifically imposed certain obligations on the Judgment Debtors, they having not objected to. On the contrary, they became parties to the same tacitly accepting the settlement. Added, they suffered dismissal of their CA No.63 of 1979 by virtue of said common order which specifically mentioned “.... Contained therein is an



obligation on the State of Orissa....” Coupled with this, a further specific direction was also given to them observing “.... the State to fulfil this obligation towards working out the settlement.” Therefore, the first contention of learned AGA as to absence of *privity of contract* falls to the ground.

(ii) The above apart, what is being sought to be performed is not a contract between two private parties, pure & simple, but the order of the highest Court of the country. Our Constitution, vide Article 144 obligates every civil authority to act in aid of the decisions of Apex Court, whether *party eo nomine* or not. This applies with more vigor here, inasmuch as civil authorities are none other than the Judgment Debtors, being parties to the proceedings who were in so many words directed to give effect to the settlement recorded in the order dated 27.03.1992, whereby subject Civil Appeals were disposed off.

(iii) The proposition that a compromise decree is nothing but a contract between the parties with the seal of court superadded, has several shades of meanings. However, none of them would suggest that such a decree is unenforceable against the parties who are bound by it, not by virtue of its terms *per se*, but the direction of Apex Court to implement the same. In the absence of such a direction, contention of the kind could have arguably been sustained. Learned counsel for the petitioner is right in submitting that there is no difference between a decree obtained on compromise and a decree secured after full-fledged trial, when it comes to their execution/enforcement, subject to all just exceptions, into which argued case of the Judgment Debtors does not fit. Much is not necessary to specify.

7.4. AS TO DOCTRINE OF FRUSTRATION OF CONTRACT:



(i) The passionate contention of Mr. Lenka that in view of the Forest (Conservation) Act, 1980, as progressively interpreted by the Apex Court in Godavarman decisions in series that developed Forest Conservation Jurisprudence precedent by precedent, the order/decreed has become inexecutable in its present form & substance, does not merit full acceptance. 1980 Act was already there, as 1972 Act well was, when C.A. Nos.62 & 63 of 1979 were disposed off only on 27.03.1992. The former was ten-year old and the later 20 years, as on that date. Thus, it is not a new development that was not within the contemplation of court & parties, when the final order was made. Secondly, Judgment Debtors' I.A. No.2 & 3 of 1993 seeking modification of the settlement, as recorded in the order, which is already discussed, were negatived. Therefore, this contention is nothing but an afterthought intended to defeat the decree, if not defraud the Decree Holders. It hardly needs to be stated that the doctrine of frustration focuses *post contractu* scenario and not *ex-post facto*. Chitty on Contracts, 25th Edition at paragraph 1521 writes:

“The doctrine of frustration is relevant when it is alleged that a change of circumstances after the formation of the contract has rendered it physically or commercially impossible to fulfill the contract or has transformed performance into a radically different obligation from that undertaken in the contract. The doctrine is not concerned with initial impossibility which may render a contract void ab initio”

(ii) The doctrine of frustration vociferously argued by the learned AGA is largely confined to the realm of law of contract. It is true that a compromise decree is a contract between the parties with seal of the court superadded. This Court is not sure that the doctrine of frustration obtaining in the realm of law of contract would readily apply to the enforcement of court orders/decrees.



The Apex Court in *C.F. Angadi v. Y.S. Mrannayya*,⁴ observed that although a contract is not any the less a contract because it is embodied in a judge's order, it is something more than a contract and that different considerations would apply when it is so embodied. Further, a party invoking equitable doctrine like this has to show its *bona fide*, which remains militantly lacking here. Now, arguably there may be some road block.

(iii) Forest Conservation Jurisprudence started evolving with T.N. *Godavarman Thirumulkpad v. Union of India*,⁵. Over the period, it has moved from April to May, and now is in the June of its life, is true. Arguably, felling of trees in the fast depleting forests, is neither permissible nor desirable, forests being the lifeline of Mother Earth. It is not the case of Judgment Debtors that post disposal of Civil Appeals in question, no trees in the State forests that fell on their own, were not removed & auctioned during the period between 27.03.1992 and the *Godavarman supra*. Why during that interregnum the Judgment Debtors did not take steps to implement the settlement in question despite Apex Court Order/Decree remains a mystery wrapped in enigma. This apart, there was no case of complete embargo on the disposal of fallen trees in the forest even for years. There was abundant opportunity for obeying the court order. Apathy to the courts & their judgments is writ large, to say the least.

7.5. AS TO SUBSTITUTED REMEDY:

(i) The above, however, is not the end of road to the Decree Holders, who have been relentlessly fighting this legal battle since decades. The first Decree Holder is dead & gone and his LRs, having brought on record in his stead, are continuing these proceedings. Orders/decrees of courts, more particularly of

⁴ 1972 SCR (2) 515

⁵ (1997) 2 SCC 267



the highest Court of the country, cannot go unimplemented by the Judgment Debtors with impunity. They ought to be enforced, when parties fail to implement the same. Mere showing ritualistic respect to courts, is not sufficient. A party victorious in the legal battle has to reap the fruits of litigation, and nothing short of that would satisfy him.

(ii) In a changed circumstance, if primary rights under the decree for some reason cannot be enforced, then their secondary rights have to be recognized & enforced by way of granting substituted remedy. It is the duty of Executing Court to make all endeavours in this direction. It was Justice Oliver Wendell Holmes, who in **DAVIS v. MILLS**,⁶ observed as under:

“Constitutions are intended to preserve practical and substantial rights, not to maintain theories...”

What he said more than a century ago equally applies to the Legal System. The State and its functionaries conduct themselves as model litigants. When a citizen wins a legal battle, State should rejoice it. That spirit is not seen nowadays. At times, State functionaries take ego trip. That drives the citizens to think, if State is their first enemy. This does not auger well to the good governance.

7.6. AS TO NON-PAYMENT BY THE DECREE HOLDERS:

(i) Learned AGA next contended that the Decree Holders had not come forward to make the payments in terms of contract awarded to them, the time prescribed for compliance being essential to the arrangement vide Rule 7 of OFC Rules, 1966. This contention too, is liable to be rejected on the admitted position that the Judgment Debtors were holding the money of Decree Holders and that they had offered to return the same, that too by giving a

⁶ 194 US 451 (1904)



newspaper advertisement. Nothing is on record to show that what amount was due from the Decree Holders and when they were called upon to remit the same, at least after Judgment Debtors' I.A. Nos.2 & 3 of 1993, filed in C.A. No.62 of 1979, were rejected on 28.01.1994.

(ii) His reliance on the letter No.7759 dated 01.10.1977 issued by DFO of Karanjia Division, would not come to the rescue of Judgment Debtors, in view of a lot of subsequent developments, namely, the subject OJC, Civil Appeal Nos.62 & 63 of 1979, I.A. Nos.2 & 3 of 1993, Contempt Petitions, etc. Learned counsel for the Decree Holders submitted and I agree that the contracts are entered into, not for committing breach but for discharge of obligations undertaken, *pacta sunt servanda*, being the foundational principle of social organization. Learned counsel appearing for the Decree Holders very fairly submits that even whatever amount is payable, shall be paid immediately if indicated by the Judgment Debtors. Of course, this has to be with interest, so that the equities are adjusted, more particularly when rupee value has slid down over the years.

7.7. AS TO RULINGS CITED AT THE BAR:

The propositions that the Executing Court cannot go behind the decree, Executing Court ordinarily should take the decree as it is, all endeavors should be made by the Courts for expeditious execution of decrees, an agreement contrary to law or policy of the State is null & void, by the change of law a contract may be frustrated and even a decree founded on a compromise may be rendered in-executable by the happening of subsequent events have been well settled, and no one at the Bar controverted the same. The decisions cited in the case broadly reflect these elementary principles. Therefore, discussing



them individually is avoided, so that this judgment does not become a thesis. However, a few of them are referred to, as of judicial propriety.

In the above circumstances, this Execution Case having been favoured the following directions are issued:

- (i) The Judgment Debtors shall supply to the Decree Holders the quantity of logs of wood under the forest contract in question in terms of settlement as recorded by the Apex Court in Civil Appeal No.62 & 63 of 1979 disposed of vide common order dated 27.03.1993 through the Orissa Forest Development Corporation or such other State Agency within three months, subject to deficit of stipulated payments being made good by the Decree Holders with simple interest @ 6% per annum reckoned from 22.02.1997, i.e., the date on which their Execution Case No.3 of 1995 was dismissed by the learned Civil Judge, Karanjia. This payment shall be made within four weeks.
- (ii) Alternatively, the Judgement Debtors shall pay to the Decree Holders within three months the present market value of the quantity of logs of the nature, minus the deficit payment with interest component to be computed (payable by the Decree Holders), as mentioned in the immediately preceding direction (i).
- (iii) The Judgment Debtors shall pay to the Decree Holders within three months a sum of Rs.2,00,000/- (rupees two lakh) only by way of exemplary costs, since they are responsible for a slew of avoidable litigations which the Decree Holders were driven to fight for decades. This amount may be recovered from the erring officials in accordance with law.



(iv) It is open to the parties to move appropriate applications, if needed for giving effect to this order or for any clarification or for removing the difficulties that may be encountered in its implementation.

Web copy of this judgment to be acted upon by all concerned.

***Dixit Krishna Shripad,
Judge***

*Orissa High Court, Cuttack
The 8th day of September, 2025/Prasant/GDS*