

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 763 of 2016**

1. Smt. Premlata W/o Late Om Prakash Sigtiya, Aged About 65 Years R/o Ward No 17, At Present Ward No 12, In Front Of Sampat Kumar Laxminarayan Readymade Shop Mahabir General Store Manendragarh, Tahsil Manendragarh, Distirct Korea Chhattisgarh
2. Pawan Kumar S/o Om Prakash Sigtiya, Aged About 41 Years R/o Ward No 17, At Present Ward No 12, In Front Of Sampat Kumar Laxminarayan Readymade Shop Mahabir General Store Manendragarh, Tahsil Manendragarh, Distirct Korea Chhattisgarh
3. Shrikant (Wrongly Mentioned Shrimant) S/o Aged About 39 Years R/o Ward No 17, At Present Ward No 12, In Front Of Sampat Kumar Laxminarayan Readymade Shop Mahabir General Store Manendragarh, Tahsil Manendragarh, Distirct Korea Chhattisgarh (Defendants)

---- Petitioners

Versus

1. Smt. Asha Devi W/o Late Murarilal Saraf, Aged About 60 Years R/o Ward No 16, Manendragarh, Tehsil Manendragarh, Distirct Korea Chhattisgarh (Plaintiff)
2. Shri Mahabir Prasad S/o Late Om Prakash Sigtiya, Aged About 42 Years R/o Samta Colony, Near Hanuman Temple, Riapur, Distirct Raipur Chhattisgarh (Defendant No.2)
3. State Of Chhattisgarh Through The Collector, Korea Chhattisgarh (Defendant No.5)
4. Shakti Saraf W/o Kishan Lal Saraf, Aged About 35 Years R/o Bina Lodge, Manendragarh, Distirct Korea Chhattisgarh (Defendant No.6)
5. Ankur Saraf W/o Kishan Lal Saraf, Aged About 31 Years R/o Bina Lodge, Manendragarh, Distirct Korea Chhattisgarh (Defendant No.7)

---- Respondents

For Petitioner : Shri Anand Shukla, Advocate.

HON'BLE SHRI JUSTICE SANJAY AGRAWAL**Order On Board**

23/12/2016

1. Heard on admission.
2. This is a petition filed by some of the heirs of original tenant while exercising the powers enumerated under Article 227 of the Constitution of India by questioning the propriety of the order of the Executing Court dated 03.11.2016, by which, the application as submitted by the petitioners before the Executing Court has been rejected.
3. I have gone through the entire record carefully.
4. From perusal of the record, it is clear that a suit for eviction with mesne profits was decreed by the learned Second Additional District Judge, Manendragarh by its judgment and decree dated 29.02.2016 passed in Civil Suit No.8-A/2011. While passing the same, it was directed by the learned trial Court that the decree with regard to the mesne profits could be effective only if the plaintiff/decreed-holder deposits the prescribed Court fee within the period of 15 days from the delivery of the decree.
5. The execution of the aforesaid decree only in relation to the delivery of possession has been stayed by this Court vide its order dated 05.04.2016 in an appeal, being F.A. No.110/2016, preferred by the defendants against the said judgment and decree dated 29.02.2016.
6. The plaintiff/decreed-holder has initiated the execution proceedings with regard to the remaining part, i.e., mesne profits, of the decree. During the pendency of its execution, the present petitioners have moved an application as per the provisions prescribed under Order 21 Rule 17 (1) of the Code of Civil Procedure, 1908 by submitting inter alia that the terms and conditions as stipulated in the said decree have not been complied with, and therefore, for its non-compliance, the application for execution as framed deserves to be

rejected.

7. Upon hearing the learned counsel for the parties, the Executing Court has observed vide its impugned order dated 03.11.2016 that the plaintiff/decreed-holder has deposited the requisite Court fee on 10.03.2016 as per the terms required under the said decree. Since the decree-holder has paid the requisite Court fee, therefore, the application for rejection of execution proceedings has rightly been rejected by the Executing Court. It is, however, made clear that as far as the other grounds as raised by the present petitioners that they are not required to deposit the decretal mesne profits for other defendant, i.e., defendant No.2, for which, the same may be considered and decided by the Executing Court in accordance with law.

8. With the above observation, the petition is disposed of at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge