

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.103 of 2014

Smt. Kumkum Verma, W/o Shri Shishir Verma, aged about 43 years, R/o Vinoba Nagar, Police Station and Post Civil Lines, Bilaspur, Civil and Revenue Distt. Bilaspur (C.G.)

(Plaintiff)/
---- Applicant

Versus

1. State of Chhattisgarh, through Collector, Bilaspur, Distt. Bilaspur (C.G.)
 2. Superintendent of Police, Bilaspur, Distt. Bilaspur (C.G.)
 3. Joint Director, Sub-seeder Intelligence, Bureau, MHA, Government of India, HN 1522, Opposite Government ITI, Post Office Ravi Gram, Shyam Nagar, Distt. Raipur (C.G.)
- (Defendants)/
---- Respondents

For Petitioner:	Mr. Manoj Paranjpe, Advocate.
For State/Respondents No.1 & 2:	Mr. Neeraj Jain, Govt. Advocate.
For Respondent No.3:	Mr. N.K. Vyas, ASG.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

21/07/2016

1. Invoking the revisional jurisdiction of this Court under Section 151 of the CPC, this instant revision has been filed by the decree holder challenging the order dated 20-3-2014 passed by the 10th Civil Judge Class-II, Bilaspur, in Execution Case No.139A/2008 by which her application under Order 21 Rule 32 of the CPC has been rejected.
2. Aforesaid challenge has been made on the following factual backdrop: -

3. On 26-9-2008, the trial Court passed a decree in favour of the petitioner herein / plaintiff declaring that the plaintiff has right to access over the defendants' land in which 20 ft. wide road has been constructed, and restrained the defendants from interfering with the said road. When the defendants interfered with the said road and not allowed the plaintiff to access to the said road, the plaintiff / petitioner herein filed an application under Order 21 Rule 32 of the CPC and the said application has been rejected by the impugned order.
4. Mr. Manoj Paranjpe, learned counsel for the petitioner, submits that the order passed by the executing court is apparently illegal and bad in law. He further submits that merely on the basis of the report of the revenue officer, the application has been rejected without making any enquiry and without giving an opportunity to establish the willful failure on the part of the defendants to obey the order by simply holding that the plaintiff / petitioner herein has failed to establish breach on the part of the defendants / respondents herein.
5. Mr. N.K. Vyas, learned Assistant Solicitor General appearing on behalf of respondent No.3, and Mr. Neeraj Jain, learned Government Advocate appearing on behalf of the State/ respondents No.1 & 2, would support the impugned order.
6. I have heard learned counsel for the parties, perused the order impugned and records of the Courts below.
7. Order 21 Rule 32 (1) of the CPC provides as under: -

“32. Decree for specific performance for

restitution of conjugal rights, or for an injunction.—(1)Where the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an opportunity of obeying the decree and has willfully failed to obey it, the decree may be enforced in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction by his detention in the civil prison, or by the attachment of his property, or by both.”

8. It is not in dispute that decree for permanent injunction has been passed in favour of the plaintiff / petitioner herein and against the defendants and the plaintiff has right to access to the road as per the decree of the trial Court which is said to have been disobeyed by the defendants / respondents herein. The executing Court simply called report from revenue authorities and dismissed the application holding that blocking of road, whether it is prior to passing of the decree or after passing of the decree, has not been established.
9. The fact remains that the executing Court has not conducted enquiry on the application and has not afforded opportunity to establish the fact that the defendants have willfully failed to obey the decree of injunction passed by the trial Court. It was incumbent upon the trial Court to permit the petitioner herein to establish that the respondents herein have willfully flawed the order of injunction and to give further opportunity to the respondents herein to prove that they have not willfully flawed the order of injunction. Thus, the executing Court has committed jurisdictional error by rejecting the application under

Order 21 Rule 32 of the CPC without holding enquiry under Order 21 Rule 32 of the CPC.

10. Resultantly, the civil revision is allowed and the order impugned is hereby set aside. The application filed by the plaintiff / petitioner herein under Order 21 Rule 32 of the CPC is restored to the file of the executing court for afresh adjudication after affording opportunity to the parties and making enquiry on the said application within four months from the date of receipt of a copy of this order. It is made clear that this Court has not considered the merits of the matter and it is for the executing Court to consider the matter on the merits, in accordance with law. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge