

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 228 of 2016**

Order Reserved on : 20.7.2016

Order Passed on :19.10.2016

- Smt. Sarjeet Kaur W/o Late Shri Sher Singh, Aged About 70 Years R/o Bhilai- 3, Tahsil Patan, Civil And Revenue Distt. Durg (Chhattisgarh)

---- Petitioner**Versus**

- Gajadhar Prasad S/o Brij Lal Kurmi, (Died In The Year 2012) Through L.Rs :
 - (a) Horilal Chandrakar, Aged about 65 Years S/o Late Gajadhar Prasad, R/o Village Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)
 - (b) Kamdev Chandrakar, Aged about 62 Years S/o Late Gajadhar Prasad, R/o Village Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)
 - (c) Smt. Damyanti Bai, W/o Hemlal, R/o Village Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)
 - (d) Kamla Bai, W/o Manak Lal Chandrakar, R/o Village Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)
- Kunj Lal, S/o Brij Lal (Died In The Year 2012) Through L.Rs :
 - (a) Smt. Kadmin Chandrakar, W/o Salik Ram Chandrakar, R/o Village Donar, Distt. Dhamtari (Chhattisgarh)
 - (b) Indra Kumar Chandrakar, S/o Late Kunj Lal Chandrakar, Trupti Apartment, Pachpedi Naka, Raipur, Distt. Raipur (Chhattisgarh).
 - (c) Chinta Ram Chandrakar, S/o Late Kunj Lal Chandrakar, R/o Village Sirsakala, Bhilai, Distt. Durg (Chhattisgarh)
 - (d) Radhe Shyam Chandrakar, S/o Late Kunj Ram Chandrakar, R/o Uttar Vasundhra Nagar, Bhilai- 3, Distt. Durg (Chhattisgarh)
 - (e) Dev Kumar Chandrakar, S/o Late Kunj Lal Chandrakar, R/o Samta Colony, Street No. 9, Qtr. No. 93, Raipur, Distt. Raipur (Chhattisgarh)
 - (f) Smt. Shiv Kumari, W/o Rameshwar Chandrakar, R/o Village Umardha, Post Kurud, Distt. Dhamtari (Chhattisgarh)
 - (g) Smt. Meena Chandrakar, W/o Roshan Lal Chandrakar, R/o Village Beltukri, Khariar Road (Chhattisgarh)
 - (h) Smt. Prem Prabha Chandrakar, W/o Mordhwaj Chandrakar, R/o Village Lakholi, Distt. Raipur (Chhattisgarh)
 - (i) Ashok Kumar Chandrakar, S/o Late Kunj Lal Chandrakar, R/o Village Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)
 - (j) Ejendra Kumar, S/o Late Kunj Lal Chandrakar, R/o Village

Sirsakala, Tah. Patan, Distt. Durg (Chhattisgarh)

---- Respondent

For Petitioner : Shri Ravindra Agrawal, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

1. This writ petition under Article 227 of the Constitution of India has been preferred by the decree holder challenging the order passed by the Executing Court dismissing her application for execution of the decree dated 12.4.93 passed by the 5th Additional District Judge, Durg as barred by limitation.
2. Facts of the matter, briefly stated, are that the original plaintiffs Sher Singh and petitioner Smt. Sarjeet Kaur preferred a suit for specific performance of agreement to sell dated 19.3.1985 against the defendants/respondents 1 and 2 (now represented by their legal heirs). The trial Court of Civil Judge Class-1, Durg dismissed the suit bearing No.14-A/91 by a judgment dated 9.8.91, against which the plaintiffs preferred First Appeal in the Court of 5th ADJ, Durg. The appellate Court, by its judgment and decree dated 12.4.93, allowed the appeal preferred by the plaintiffs and granted a decree of specific performance in their favour by directing that on plaintiffs paying balance sale consideration of Rs.8,700/-, the

defendants shall execute the sale deed in favour of plaintiff No.2/present petitioner within one month of such payment and handover possession to plaintiff No.2 with further direction that the expenses shall be borne by the plaintiffs. The plaintiffs deposited the balance sale consideration before the trial Court on 15.6.1993 (Annexure-P/3).

3. The defendants preferred Second Appeal No.225/93 in the High Court of Madhya Pradesh wherein execution of the decree was stayed by the High Court vide order dated 10.5.93. The appeal came to be dismissed at the admission stage on 11.10.93.
4. As stated in para-8.10 of this petition, the petitioner moved an application for execution of the judgment and decree dated 12.4.93 passed by the 5th ADJ, Durg in Civil Appeal No.30-A/92 on 23.2.2012. It is this application which has been rejected by the impugned order on the ground that limitation for moving execution application is 12 years as provided under Article 136 of the Limitation Act, therefore, the same having been preferred after expiry of 12 years, it is barred by limitation.
5. Placing reliance on judgment of the Supreme Court in the matter of **Pallav Sheth Vs. Custodian and Others**, {(2001) 7 SCC 549}, it is argued by learned counsel for the petitioner that the judgment

debtor having sold the property in favour of some other person, the petitioner had to file Civil Suit No.32-A/2006 before 7th Civil Judge, Class-2, Durg wherein the judgment debtors moved an application on 28.3.2007 stating that the Second Appeal is still pending, therefore, the trial Court directed the parties to verify the status and inform the Court and thereafter it was for the first time on 15.02.2012 the petitioner became aware about dismissal of the Second Appeal. Therefore, the judgment debtors ought not to be allowed to take benefit of their own act of fraud to defeat the execution application.

6. I have heard learned counsel for the petitioner at length and perused the documents available on record of this writ petition.
7. Article 136 of the Limitation Act deals with the period of limitation for execution of any decree (other than the decree granting a mandatory injunction) or order of any civil Court and the period of limitation of 12 years for such execution commences when the decree or order becomes enforceable or where the decree or any subsequent order directs payment of money or delivery of any property to be made at a certain date or at recurring periods, when default in making payment or delivery in respect of which execution is sought, takes place.

8. In the case at hand, executable decree was passed by the first Appellate Court on 12.4.93 directing the plaintiffs to pay balance sale consideration and thereafter the defendants shall execute the sale deed in favour of plaintiff No.2 within one month of such deposit and handover possession of the land. Payment of balance sale consideration was made by plaintiff No.2/petitioner on 15.6.93, therefore, the judgment debtor was required to execute the sale deed within one month thereafter i.e. till 15.7.93 and immediately after this date, the decree became executable. In the Second Appeal, the judgment and decree was stayed by the High Court on 10.5.93 and thereafter the Second Appeal was dismissed *in limine* on 11.10.93. Therefore, the decree was executable immediately after 11.10.93. The plaintiff was therefore required to move an application for execution of the decree within 12 years from 11.10.93, however, the application for execution was moved on 22.2.2012 i.e. after about 19 years of the decree becoming executable. The execution application was thus clearly barred by limitation.
9. Reliance placed in the matter of **Pallav Sheth** (Supra) is thoroughly misplaced inasmuch as Section 17 of the Limitation Act would apply when fraud is committed by a party and not when the interim order was passed by the superior Court which already stood

vacated on termination of the main proceeding and thus, the interim order having merged in the final order of dismissal of Second Appeal, duty equally lies on the parties suffering interim order in Second Appeal to have verified the same when the same was presumed to be pending for years together.

10. The decree holder does not seem to have made any effort to trace the whereabouts and know outcome of the second appeal in which interim order was passed on 10.5.93. The decree holder is also conspicuously silent as to whether he had received any notice from the High Court because in the interim order dated 10.5.93, there is direction for payment of Process Fee. It is also to be seen that the order passed by the High Court dismissing the second appeal *in limine* on 11.10.93 was passed in the absence of learned counsel for the judgment debtor. The Registry note available in certified copy at page 32 of the writ petition would indicate that copy of the order dated 11.10.93 was sent to the District Judge, Durg and Civil Judge Class-1 Durg as well on 8.11.93, therefore, once information has already been sent to the trial Court and the first Appellate Court, the decree holder should also be vigilant and it is not a case where fraud has been committed by the other side. It is rightly observed by the Court below that the judgment debtor was not under any legal obligation or commitment to the decree holder in

respect of disclosure of result of second appeal. In absence of such legal obligation, non-disclosure of outcome of second appeal to the decree holder would not tantamount to commission of fraud by the judgment debtor.

11. It is also to be seen that disclosure of outcome of second appeal was made before the trial Court in another civil suit preferred by the decree holder when the judgment debtors sold out the property in favour of third person. As stated in para 8.6 of the writ petition, the other suit was filed in the year 2006 whereas limitation of 12 years commenced immediately after 11.10.93 when the second appeal was dismissed and limitation of 12 years came to an end on 11.10.2005. Information of outcome of second appeal was thus made in other suit after limitation of 12 years, therefore, on facts also, the petitioner is not entitled to be protected under Section 17 of the Limitation Act, even if for the sake of argument it is treated to be applicable.

12. For all the afore-stated reasons, the instant petition under Article 227 of the Constitution of India being bereft of any substance deserves to be and is hereby dismissed.

Sd/-
Judge
(Prashant Kumar Mishra)