

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Misc. Appeal No.32 of 2016**

1. Rajkishore @ Munna Kesharwani S/o Late Heera Lal Kesharwani, Aged About 56 Years R/o Shree Bajrang Rice Mill, Nehru Nagar Bilaspur, Police Station- Civil Lines Bilaspur, Tahsil & District Bilaspur, Chhattisgarh, Civil & Revenue District Bilaspur, Chhattisgarh
2. Nawalkishore Kesharwani S/o Late Heera Lal Kesharwani, Aged About 52 Years R/o Shree Bajrang Rice Mill, Nehru Nagar Bilaspur, Police Station- Civil Lines Bilaspur, Tahsil & District Bilaspur, Chhattisgarh, Civil & Revenue District Bilaspur, Chhattisgarh(Non-Applicant No.1 & 2)

---- Appellants**Versus**

1. Sunderlal Kesharwani S/o Late Ramdev Kesharwani, Aged About 62 Years R/o Gondpara Bilaspur, Police Station- City Kotwali, Tahsil & District Bilaspur, Chhattisgarh, Civil & Revenue District- Bilaspur, Chhattisgarh(Applicant)
2. Hanumant @ Bablu Kesharwani S/o Late Heera Lal Kesharwani, Aged About 42 Years R/o Shree Bajrang Rice Mill, Nehru Nagar Bilaspur, Police Station- Civil Lines Bilaspur, Tahsil & District Bilaspur, Chhattisgarh, Civil & Revenue District Bilaspur, Chhattisgarh(Non-Applicant No.3)

---- Respondents

For Appellants : Shri Ratnesh Kumar Agrawal,
Advocate
None for the respondents though represented.

HON'BLE SHRI JUSTICE CHANDRA BHUSHAN BAJPAI**ORDER ON BOARD****17/10/2016**

1. Learned counsel for the appellants would submit that the order passed by the Court below suffers illegality as the trial Court has acted beyond the scope of Order 39 Rule 2 sub-rule 2 (a) of the

Code of Civil Procedure, 1908 (for short the 'Code') and also the instant Misc. Appeal is maintainable on other factual aspects as the status-quo of the property on the date of order of temporary injunction was not specified, hence, the matter may be disposed of finally.

2. On due consideration, the instant Misc. Appeal is heard finally as it involves the authority of the Court below to pass the impugned order dated 15.3.2016 beyond jurisdiction on the law point.

3. Facts in brief of the case are that the applicant/ respondent No.1, filed Civil Suit No. 27-A/12 for declaration and permanent injunction before the trial Court. The Court below while hearing on application filed by the applicant/ respondent No.1, directed that defendants No. 1 and 2/ present appellants shall maintain the status-quo vide order dated 12.12.2012. After the alleged breach, the applicant/respondent No.1, filed an application for necessary remedies available under the provisions of Order 39 Rule 2-A of the Code regarding consequence of disobedience and breach of injunction. The Court below vide order dated 15.3.2016 held that non-applicants 1 and 2/ appellants shall pay compensation amount of Rs.2,000/- each to applicant/ respondent 1. Against the said order, non-applicants No.1 and 2/ appellants had preferred the instant Misc. Appeal under Order 43 Rule 1 (r) of the Code and prayed that the impugned order dated 15.3.2016 be set aside.

4. Heard.

5. Learned counsel for the appellants would submit that there is no provision in the legislature under Order 39 Rule 2-A of the Code for compensation. The Code only provided for attachment of the property and may also order for detention in the civil prison as there is no discretion left to the Court for compensation, the Court below acted arbitrarily including other grounds on facts and passed an order beyond the authority, hence, it may be set aside.

6. Perused the impugned order and the other documents annexed along with the instant Misc. Appeal.

7. For relevance, provisions of Order 39 Rule 2-A of the Code is reproduced as under:

ORDER XXXIX

TEMPORARY INJUNCTIONS & INTERLOCUTORY ORDERS

xxx

xxx

xxx

xxx

R. 2-A. Consequence of disobedience or breach of injunction.- (1) In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time, if the

disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

8. From perusal of the said provision it appears that the trial Court may order for the attachment of the property and also order for detention in civil prison and the said attachment under this Rule shall not remain in force after a period of one year, and at the end of which time, if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

9. From perusal of the impugned order it appears that the property in question was never attached. Directly the Court below ordered for compensation to be paid to respondent No.1. Subsequently, as mentioned in para 9 of the order temporary injunction application was dismissed by the trial Court in original Civil Suit.

10. At the out set, it appears that the Court below had not followed the procedural law and ordered directly for payment of compensation. The said order is beyond the authority of law and hence, it is liable to be set aside.

11. Consequently, the impugned order dated 15.3.2016 is hereby set aside. The Court below is directed to re-hear the parties afresh and pass an order under the authority of law.

12. Parties may file a copy of this order before the Court below for compliance.

13. The instant Misc. Appeal stands disposed of.

14. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
JUDGE