

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 589 of 2016

1. Rajesh Yadav S/o Shri Balkrishna Yadav, Aged About 31 Years R/o House No 18, Azad Market, Resali Bhilai, Distirct Durg Chhattisgarh
2. Awdhesh Yadav, S/o Shri Balkrishna Yadav, Aged About 48 Years R/o House No 18, Azad Market, Resali Bhilai, Distirct Durg Chhattisgarh
3. Balkrishna Yadav, S/o Shri Sudarshan Yadav, Aged About 80 Years R/o House No 18, Azad Market, Resali Bhilai, Distirct Durg Chhattisgarh

---- Petitioners

Versus

1. M/s Orix Auto Infrastructure Sivex Limited Registred Officer No 94, Marol Co Operative Industrial State Andheri Kurla Road Andheri East Mumbai, Distirct Mumbai Maharastra
2. Shambhu Nath Baitha, S/o Shri Bharat Baitha, R/o Opposite Ilahabad, Baik Newi Khaursipar Bhilai, Tehsil & Distirct Durg Chhattisgarh

---- Respondents

Shri Atanu Ghosh, counsel for the petitioner/s.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/09/2016

By this petition, under Article 227 of the Constitution of India, the petitioner has assailed correctness and validity of order dated 21/07/2016 by which, the Executing Court has directed attachment of the property to the judgment debtor towards auction and recovery of the amount due and payable under the award.

2. Learned counsel for the applicant submits that challenge on the ground that the Court below has not taken into consideration that the company has falsely lodged claim and obtained award in its favour whereas the petitioner is continuously paying installment amount. It is further contended that the Court below did not consider that the company has already attached two vehicles of the petitioner and the value of the same has not been taken into consideration to allow necessary deductions from the amount liable to be recovered under the award. Thirdly, it is submitted that the land, which is directed to be attached, has

been purchased by the petitioner for building residential houses, therefore, it could not be attached.

3. As far as legality and validity of award is concerned, in execution proceedings, the Executing Court cannot go behind the award. The submission that the petitioner was paying installment regularly, therefore, he was not liable to pay anything to the respondent / decree holder, cannot be examined in execution proceedings.

The other submission that earlier also, two vehicles have been attached, therefore, appropriate deduction from the amount liable to be recovered should have been allowed, is again a matter for consideration by the Arbitrator. In execution proceedings, claim that the value of two vehicles earlier attached ought to be adjusted while passing award, cannot be gone into. This could be raised by the petitioner only in appropriate application for setting aside award under the provisions of Arbitration and Conciliation Act, 1996. The last submission that the plot which has been directed to be attached was purchased by the petitioner for building residential houses and therefore, cannot be attached, is bereft of any statutory provision for the time being in force. Learned counsel for the petitioner could not point out any legal provision which provides such kind of exemption in execution of award.

4. In view of above, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge