

**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No. 56 OF 2017**

1. Managing Director ( Manager & Director ) Chhattigarh State Power Distribution Company Limited Behind Rajkumar College, Dangania, Raipur (Chhattisgarh) Through Executive Engineer, ( O & M) Division, Sakti, Janjgir Champa (Chhattisgarh)
2. Chief Engineer, Bilaspur Area, Chhattisgarh, Chhattisgarh State Power Distribution Company Limited, Tifra, Bilaspur (Chhattisgarh)
3. Executive Engineer, ( O & M) Division, CSPDCL, Sakti, Janjgir Champa (Chhattisgarh)
4. Assistant Engineer, CSPDCL, Jaijaipur, District Janjgir Champa (Chhattisgarh)
5. Junior Engineer, CSPDCL, Jaijaipur, District Janjgir Champa (Chhattisgarh)

**---- Petitioners****Versus**

1. Chhattisgarh State Consumer Disputes Redressal Commission, Raipur Through The Registrar, Devendra Nagar, Raipur (Chhattisgarh)
2. District Consumer Disputes Redressal Forum, Janjgir Champa, Through Its President, Janjgir Champa, Chhattisgarh.
3. Raju Sidar, S/o Late Tiwari Sidar, Aged About 15 Years Minor Through Guardian Maternal Uncle Gopal Sidar, Aged About 62 Years, S/o Mohit Ram Sidar, R/o Village Amakoni, P S And Tahsil Jaijaipur, District Janjgir Champa (Chhattisgarh)
4. Rajni Sidar, D/o Late Tiwari Sidar, Aged About 13 Years Minor Through Guardian Maternal Uncle Gopal Sidar, Aged About 62 Years, S/o Mohit Ram Sidar, R/o Village Amakoni, P S And Tahsil Jaijaipur, District Janjgir Champa (Chhattisgarh)
5. Raja Sidar, S/o Late Tiwari Sidar, Aged About 10 Years Minor Through Guardian Maternal Uncle Gopal Sidar, Aged About 62 Years, S/o Mohit Ram Sidar, R/o Village Amakoni, P S And Tahsil Jaijaipur, District Janjgir Champa (Chhattisgarh)
6. Rajesh Sidar, S/o Late Tiwari Sidar, Aged About 7 Years Minor Through Guardian Maternal Uncle Gopal Sidar, Aged About 62 Years, S/o Mohit Ram Sidar, R/o Village Amakoni, P S And Tahsil Jaijaipur, District Janjgir Champa (Chhattisgarh)

**---- Respondents**

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For Petitioners

Mr. Varun Sharma, Advocate

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**SB: Hon'ble Shri Justice P.Sam Koshy**

**Order On Board**

**17.01.2017**

1. The Writ Petition has been filed seeking for quashment of order dated 30.12.2016 passed in Execution Case No. 19/2016 Annexure P/1 pending before Respondent No.2. Alternatively, it has also been prayed that the appeal which is pending before Respondent No.1 be decided at the earliest.
2. A brief fact of the case is that the District Consumer Forum, Janjgir-Champa / Respondent No.2 has passed an order granting award of compensation of Rs. 5.34 lakh against the present Petitioners payable to Respondents No. 3 to 5, complainants. Against the said order of the District Forum the Petitioners had preferred an appeal before Respondent No.1 where the appeal has been registered as Appeal No. FA 16/565. Along with the appeal an application for interim relief was also filed. Respondent No.1 the Appellate Body while considering the case for interim relief took a stand that the matter itself may be finally decided and accordingly posted the case for final hearing on couple of the dates and the next date of hearing is 15.02.2017. Meanwhile, Respondents No.3 to 5 moved application for execution of the original award under Section 27 of the Consumer Protection Act. The Petitioners had immediately filed application under Order 21 Rule 26 CPC. The Court below vide its order dated 30.12.2016 has rejected the application filed by the Petitioners under Order 21 Rule 26 CPC seeking for keeping the execution proceeding in abeyance in the light of the pending appeal. Rejecting the

application the Court below fixed the matter for 17.01.2017 for honouring the order of the forum or else coercive method to be initiated by the forum for the execution of the order.

3. Learned Counsel for the Petitioners submit that after the order dated 30.12.2016 was passed, they had been making efforts before Respondent No.1 to get the appeal be listed on an early date for consideration of the application for grant of interim relief in the light of order dated 30.12.2016. However, the Registrar of Respondent No.1 body has refused to grant permission to make a request to the Appellate body for the simple reason that on an earlier occasion on their application for urgent hearing the matter got adjourned. This attitude of the Registrar if what has been stated by the Petitioners is believed to be true then it is definitely not appreciable.
4. It is expected that the Respondent No.1 shall look in the said conduct of the Registrar and take appropriate remedial steps on administrative side.
5. Further so far as merits of the case is concerned since the appeal as has been prescribed under the Act has been filed by the Petitioners and the appeal also being entertained by the Appellate forum, the appeal should not get rendered infructuous in the course of the original order itself being executed. Learned Counsel for the Petitioners further submits that the Appellate forum having found merits in the appeal had admitted the case and the same has been ordered to be listed for final hearing and also taken up the matter on more than a couple of the occasions for hearing and the next date has been fixed for 15.02.2017.
6. In the opinion of this Court when the Appellate Court has fixed the matter on merits for 15.02.2017, there is no reason why the District Forum could not have waited till 15.02.2017 for the execution of the original order.
7. It is also pertinent to take note of the fact that Respondent No.1, the

Appellate Forum has not rejected the application for stay which was filed along with the appeal and the same is also pending consideration. In the process if any coercive step is initiated for execution of the decree, the appeal itself may become futile and can render infructuous.

8. The Right to Appeal is a matter of right for any aggrieved person. Whenever an order which is appealable under the Statute, and if the aggrieved person has availed the said remedy of appeal, there is no reason to believe that the appeal is not being bonafidely pursued.
9. Thus, in the opinion of this Court ends of justice would meet if the impugned order dated 30.12.2016, Annexure P/1 is stayed for the moment with the direction that the Petitioners shall approach the Appellate Forum on 18.01.2017 when Respondent No.1 is having its link sitting at Bilaspur and request Respondent No.1, the Appellate Forum to consider the application for interim relief insisting for an early date than what has already been fixed particularly keeping in view the order dated 30.12.2016 passed by Respondent No.2, the District Forum.
10. It is observed that till the Interim Application or the Appeal which ever is decided first the effect and operation of the impugned order dated 30.12.2016 shall remain stayed.
11. With the aforesaid direction the present Petition stands disposed off.

Sd/-

**(P. Sam Koshy)**  
**JUDGE**