

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 640 of 2017

Mohd. Umar Khan S/o Late Mr. Akhtar Khan Aged About 30 Years R/o
Adarsh Nagar Arkel Road Basna 493554 Tahsil Saraipali District
Mahasamund Chhattisgarh. **---- Petitioner**

Versus

1. Hon'ble Shri Shyam Kumar Sahu, First Additional Civil Judge Class - 2
Basna - 493554 Tahsil Saraipali, District Mahasamund Chhattisgarh
2. Shri Lalit Kumar Sahu S/o Late Shri Kandarp Sahu R/o Basna - 493554
Tahsil Saraipali District Mahasamund Chhattisgarh.
3. Shri Kirti Kumar Sahu S/o Late Shri Kandarp Sahu R/o Basna - 493554
Tahsil Saraipali District Mahasamund Chhattisgarh.
4. Shri Ashok Kumar S/o Late Shri Kandarp Sahu R/o Basna - 493554 Tahsil
Saraipali District Mahasamund Chhattisgarh. **---- Respondents**

For Petitioner : Mr. V.G. Tamaskar, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15.11.2017

Heard.

1. This contempt petition has been filed by the petitioner alleging willful disobedience of order of the Court passed earlier in the matter of protection to the petitioner in Second Appeal No.474 of 2009.
2. Learned counsel for the petitioner would argue that even though the petitioner was granted protection against eviction subject to certain conditions, which according to the petitioner, has been complied with, the Court below has wrongly come to the conclusion that the petitioner has not complied with the condition subject to which interim order was passed which amounts to an act of willful disobedience of the order of the Court. He submits that in this manner even when there is an interim order passed by the High Court, the appellant is facing proceeding for eviction.

3. The orders which have been placed on record show that in Second Appeal No.474 of 2009, the appellant was granted interim protection subject to the condition that if the appellant furnish security of Rs.30,000/- to the satisfaction of the trial Court and all dues recoverable under the decree for ultimate execution of the decree which may be passed by the Court in appeal within 30 days, eviction part of the decree shall remain stayed.

4. Later on, a contempt petition was filed before this Court by the petitioner alleging that even though there is a protection in favour of the petitioner, the executing Court is proceeding to execute the decree. In contempt petition No.218 of 2017, an order was passed by this Court on 05.05.2017, wherein this Court had observed :

“6. Learned counsel for the petitioners has placed before this Court the order sheets of the Executing Court. One of the order sheet dated 27.08.16 shows that the order passed by the Court on 26.04.16 was placed before the Executing Court and submission was made that the Court has directed to proceed with execution. Thereafter, the Executing Court proceeded towards execution of decree. The execution proceeding continued thereafter, an order dated 04.03.17 shows that application under Order 22 Rule 3 CPC read with Order 22 Rule 4 CPC was also considered and then the Executing Court proceeded to issue warrant of possession towards execution of decree.

7. The order dated 26.04.2016 which was passed by this Court shows that the matter had to be examined by the Executing Court as to whether the conditions subject to which stay of execution of decree was fulfilled or not. The observation of this Court was that in case, the respondent/decreed holder has a case that conditions have not been satisfied, it is open for the respondents to apply to the Executing Court.

8. It appears that the Executing Court has taken this order as a command whereas, the Executing Court had a duty to examine from records whether the conditions have been fulfilled or not before the proceeding to execute the decree.

9. The order passed by the Court below may or may not be incorrect and it would be a matter of consideration in appropriate proceeding. However, I am not satisfied that this is an act of willful disobedience.

10. It would be open for the petitioners to apply for restitution of possession by moving appropriate application by satisfying the Court below that at the time when the warrant of possession was issued, he had fulfilled all the terms and conditions subject to which stay of execution of decree was

granted.”

5. The matter thereafter was again considered by the Executing Court and the order has been passed by the Executing Court on 14.08.2017 in which the Executing Court has come to a conclusion that the petitioner/judgment debtor has not complied with the order dated 15.03.2010 passed in Second Appeal No.474 of 2009 and on this satisfaction, it has proceeded to issue warrant of possession.
6. After having gone through the order passed by the Executing Court, irrespective of the merits of the case, it cannot be said to be an act of willful disobedience. The Executing Court was required to examine the matter as to whether the petitioner had complied with the conditions subject to which interim order was passed in his favour in the Second Appeal. Thereafter, the Executing Court examined the matter. Therefore, the consideration had taken place as per the direction of this Court. The submission of learned counsel for the petitioner that the order is not correct, it cannot be examined in contempt proceeding. The petitioner's remedy would be to challenge the said order in a separately constituted petition.
7. In the considered opinion of this Court, the contempt petition is misconceived in law and therefore, the contempt petition is dismissed, however with liberty to file separate constituted petition.

Sd/-

(Manindra Mohan Shrivastava)
Judge