

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 107 of 2017**

Rajkumari Jain @ Rajju Jain, W/o Late Shri Prakash Chand Jain,
aged about 61 years, R/o Lakholi Naka, Nandai Road,
Rajnandgaon (C.G.)

---- Petitioner

Versus

1. Gulab Bai, W/o Rikhiram Khandelwal
2. Smt. Kamla Devi, W/o Harishankar Khandelwal,
3. Nandkishore, S/o Late Harishankar Khandelwal,
4. Jugal Kishore, S/o Late Harishankar Khandelwas
5. Dinesh, S/o Late Harishankar Khandelwal
6. Vinesh, S/o Late Harishankar Khandelwal
 - (a) Shri Krushna, S/o Rikhiram Khandelwal, aged about 45 years
 - (b) Shri Krushna, S/o Rikhiram Khandelwal, aged about 45 years
 - (c) Satyanarayan, S/o Rkhiram Khandelwal, aged about 35 years
 - (d) Purushottam, S/o Rikhiram Khandelwal, aged about 30 years,

All R/o Ganj Line, Rajnandgaon (C.G.)
7. State of Chhattisgarh, through District Collector, Rajnandgaon (C.G.)

---- Respondents

For Petitioner: Mr. Sunil Otvani, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/03/2017**

(1) By the impugned order dated 16.11.2016, learned District Judge, Rajnandgaon has dismissed the appeal preferred by the judgment debtor/petitioner herein filed under Order 43 Rule 1(d) of the CPC affirming the order dated 18.08.2015, against which instant writ petition has been filed by the petitioner questioning the same.

(2) Shri Sunil Otwani, learned counsel for the petitioner would submit that the impugned order is contrary to the facts and law and, therefore, the same is liable to be set aside.

(3) I have heard learned counsel appearing for the petitioner and perused the order impugned with utmost circumspection.

(4) The trial Court passed decree in favour of respondent No.1/decreed holder on 17.01.1996, in which certain objection was raised by the petitioner/defendant on 24.04.2015 about the executability of the decree, which was rejected by the Executing Court on 18.08.2015 and issued warrant of possession, against which, the petitioner preferred appeal under Order 43 Rule 1 (d) of CPC;.

(5) The District Judge, in its impugned order dated 16.11.2016, has held that objection has no force and only to delay the execution of decree, such objection was raised and dismissed the appeal imposing the cost of Rs.5,000/- upon the petitioner.

(6) Applying its earlier decision in **Surya Dev Rai v. Ram Chander Rai**¹ and **Shalini Shyam Shetty v. Rajendra Shankar Patil**², the Supreme Court in **Sameer Suresh Gupta through PA Holder v. Rahul Kumar Agarwal**³ has held that supervisory jurisdiction under

¹ (2003) 6 SCC 675

² (2010) 8 SCC 329

³ (2013) 9 SCC 374

Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. It has also been held that supervisory jurisdiction or *certiorari* jurisdiction is not available to correct mere errors of fact or of law unless the following requirements are satisfied : (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act least a gross failure of justice or grave injustice should occasion.

(5) After hearing the learned counsel appearing for the petitioner, I find that sufficient reason has been assigned by the learned District Judge while rejecting the appeal and I do not find any illegality in the order impugned warranting interference by this Court under Article 227 of the Constitution of India.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

