

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****CONT No. 218 of 2017**

1. Girdhari Lal Notani S/o Shri Hardas Mal, Aged About 58 Years R/o Girdhari Fancy Stores Bazar Road Post Office Basna Tahsil Saraipali, Distt. Mahasamund, Chhattisgarh
  2. Shankar Lal Notani S/o Shri Inderlal Notani, Aged About 47 Years R/o Shankar Boot House Raipur Sambalpur Road Post Office Basna, Tahsil Saraipali, Distt. Mahasamund, Chhattisgarh
  3. Mohd. Umar Khan S/o Late Mr. Akhtar Khan, Aged About 30 Years R/o Adarsh Nagar Arkel Road Basna, Tah. Basna, Distt. Mahasamund, Chhattisgarh
- Petitioners**

**Versus**

1. Honble Shri Shyam Kumar Sahu, First Additional Civil Judge Class-2 Basna Distt. Mahasamund, Chhattisgarh
  2. Shri Lalit Kumar Sahu, S/o Late Shri Kandarp Sahu, R/o Basna, Tahsil-Saraipali, District- Mahasamund, Chhattisgarh
  3. Shri Kirti Kumar Sahu S/o Late Shri Kandarp Sahu, R/o Basna, Tahsil-Saraipali, District- Mahasamund, Chhattisgarh
  4. Shri Ashok Kumar Sahu S/o Late Shri Kandarp Sahu, R/o Basna, Tahsil- Saraipali, District- Mahasamund, Chhattisgarh .....
- Respondents**  
(Contemnors)

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

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**Hon'ble Shri Justice Manindra Mohan Shrivastava****Order On Board****05/05/2017**

Heard.

1. This is a petition for initiating contempt proceedings against the respondents on the allegation that even though there was an interim order passed by the Court on 16.09.09 in Second Appeal, staying execution of decree subject to certain conditions, Court below proceeded to execute the decree.
2. Submission of learned counsel for the petitioners is that the petitioners were entitled to protection as granted by this Court in the second

appeal subject to fulfillment of certain conditions. It is submitted that earlier before this Court the respondent/decreed holder filed an application I.A. No.4 for vacating stay and dismissal of appeal and that was dismissed by this Court with an observation that the interim order was granted only subject to fulfillment of certain conditions and if the case of the respondent/decreed holder is that conditions have not been satisfied, it is open for the respondent to apply to the Executing Court.

3. It is submitted that thereafter, the Executing Court treated the order of the Court as a command to proceed with the execution of decree without examining from the materials available on the records of execution case whether the conditions subject to which decree was stayed, were fulfilled by the petitioners/appellants or not. He submits that this act on the part of the respondent amounts to willful disobedience of the order of the Court.
4. From the perusal of the record of Second Appeal No.144 of 2009, it appears that the petitioners had moved an application I.A. No.10 for stay of execution of proceedings stating that the appellants furnished security of Rs.30,000/- on 16.09.09 and thereafter deposited Rs.16,858/- on 15.10.09 and when on 11.04.17 the appellants wanted to deposit arrears of rent, the Executing Court refused to accept the same and fixed the matter on 17.04.2017 for Police help towards execution of decree under the warrant of the Court.
5. This application was rejected by this Court on 20.04.17 in view of order dated 16.09.09 and 26.04.16.
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.
11. With the said observation, this contempt petition is dismissed.

Sd-

**(Manindra Mohan Shrivastava)**

**J U D G E**