

HIGH COURT OF CHHATTISGARH, BILASPUR
WP227 No.157 of 2018

Mansha Ram S/o Ramauram Sahu, aged 45 years, Farmer, R/o Fekari, Tah.-Patan, Distt. Durg (CG) (Died) through Legal Representatives :

1. Smt. Dhanmat Bai Sahu Wd/o Late Mansha Ram, aged about 53 years,
 2. Umashankar Sahu S/o Late Mansha Ram, aged about 34 years,
 3. Smt. Anita Sahu D/o Late Mansha Ram, W/o Bhanu Prakash Sahu, aged about 31 years,
 4. Rupesh Kumar Sahu S/o Late Mansha Ram, aged about 29 years,
 5. Ku. Yogita Sahu D/o Late Mansha Ram, aged about 26 years,
- All R/o Village – Fekari, Tah. - Patan, Distt. Durg (CG)

---- Petitioners

Versus

1A. Budhwantin Bai Wd/o Late Koduram Sahu, aged about 60 years,

1B. Santosh Kumar S/o Late Koduram Sahu, aged about 37 years,

1C. Sanjay Kumar S/o Late Koduram Sahu, aged about 32 years,

All R/o Gram Fekari, Tah.-Patan, Police Station-Utai, Distt. Durg (CG)

2. Baldau Prasad S/o Devkanth Sahu, aged about 48 years,

3. Unarnath S/o Devkanth Sahu, aged about 40 years,

4. Baratu S/o Devkanth Sahu, aged about 35 years,

All R/o Gram & Post Fekari, Tah.-Patan, Distt. Durg (CG)

5. State of Chhattisgarh Through Collector Durg, Distt. Durg (CG)

---- Respondents

For Petitioners : Mr.P. Chetan Kumar, Advocate
 For Respondent No.5: Mr.Adi Raj Surana, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

26.11.2018

1. The question for consideration is whether during the pendency of

regular execution proceeding filed on the basis of a decree or order of civil court, if the decree-holder dies, execution petition can be dismissed for want of bringing their representatives on record ?

2. Mansha Ram (decree-holder) of Civil Suit No.8A/08 (Mansha Ram v. Koduram and others) filed execution petition before the Executing Court. Decree-holder Mansha Ram died on 19.10.2017 and his legal representatives i.e. petitioners filed an application under Order 22 Rule 3 of the CPC for bringing legal representatives on record. That application has been rejected by the Executing Court holding that by virtue of Order 22 Rule 12 of the CPC, provisions contained in Order 22 Rule 3 and 4 of the CPC are not applicable in execution, feeling aggrieved against that order, this writ petition has been preferred.
3. Mr. P. Chetan Kumar, learned counsel for the petitioners would submit that since the provisions contained in Order 22 Rule 3 of the CPC are not applicable, the petitioners were at liberty to file an application for bringing legal representatives on record at any time and application could have been treated under Section 151 of the CPC and could have been allowed, but it could not have been rejected by the Executing Court.
4. I have heard learned counsel for the petitioners and perused the impugned order.
5. Order 22 Rule 12 of the CPC states as under:-

“12. Application of Order to proceedings.-Nothing in Rules 3, 4 and 8 shall apply to proceedings in execution of a decree or order.”
6. Admittedly, by virtue of Order 22 Rule 12 of the CPC, the provisions

contained in Order 22 Rule 3, 4 and 8 of the CPC are not applicable to execution of a decree.

7. The Supreme Court in the matter of V. Uthirapathi v. Ashrab Ali and others¹ considered the question and framed following question in para 10 of the report:

“10. If during the pendency of a regular execution proceeding filed on the basis of a decree or order of a civil court, the decree-holder or the judgment-debtor dies and his legal representatives are not brought on record within ninety days, can the civil court dismiss the execution petition as abated ?”

It has been held that in the event of execution proceeding, execution petition cannot be dismissed as abated and held as under:-

“15. It is clear, therefore, that if after the filing of an execution petition in time, the decree-holder dies and his legal representatives do not come on record - or the judgment-debtor dies and his legal representatives are not brought on record, then there is no abatement of the execution petition. If there is no abatement, the position in the eye of law is that the execution petition remains pending on the file of the execution Court. If it remains pending and if no time-limit is prescribed to bring the legal representatives on record in execution proceedings, it is open in case of death of the decree-holder, for his legal representative to come on record at any time. The execution application cannot even be dismissed for default behind the back of the decree-holder's legal representatives. In case of death of the judgment-debtor, the decree-holder could file an application to bring the legal representatives of the judgment-debtor on record, at any time. Of course, in case of death of judgment-debtor, the Court can fix a reasonable time for the said purpose and if the decree-holder does not file an application for the aforesaid purpose, the Court can dismiss the execution petition for default. But in any event the execution petition cannot be dismissed as abated. Alternatively, it is also open to the decree-holder's legal representatives, to file a fresh execution petition in case of death of the decree-holder; or, in case of death of the judgment-debtor, the decree-holder can file a fresh execution petition impleading the

1 (1998) 1 SCC 148

legal representatives of the judgment-debtor; such a fresh execution petition, if filed, is, in law, only a continuation of the pending execution petition - the one which was filed in time by the decree holder initially. This is the position under the Code of Civil Procedure.”

8. The Supreme Court in the matter of **Puran Singh and others v. State of Punjab and others**² has held that Order 22 CPC is not applicable to writ proceedings. However, it is incumbent on the part of the petitioner to substitute legal representatives of deceased-respondent within reasonable time.
9. The Full Bench of Allahabad High Court in the matter of **Baij Nath v. Ram Bharos**³ has held that continuance of execution is permissible on behalf of legal representatives of deceased decree holder under Order 21 Rule 16 CPC.
10. Thus, Order 22 Rule 12 of the CPC only bars the application of Rule 3, 4 and 8 of the CPC to proceedings in execution of decree. Under Section 146 of the CPC also execution proceedings could be taken or continued by legal representatives of decree holder.
11. Reverting to the facts of the present case in light of above-stated principles, the Executing Court has rejected the application filed by legal representatives of decree-holder under Order 22 Rule 3 & 4 of the CPC on the ground that said provision is not applicable to execution by virtue of the provisions contained in Order 22 Rule 12 of the CPC and closed the execution also, which is impermissible in law. True, it is that Order 22 of the CPC is not applicable to execution, but the Executing Court ought to have treated the said

² AIR 1996 SC 1092

³ AIR 1927 All 165

application either under Section 146 or Order 21 Rule 16 of the CPC and could be ordered continuance of execution by his legal representatives.

12. Accordingly, the impugned order is set aside. The above-stated application filed under Order 22 Rule 3 and 4 of the CPC is directed to be treated as filed under Order 21 Rule 16 read with Section 146 of the CPC and learned Executing Court is directed to consider the said application afresh in accordance with law expeditiously.

13. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the concerned Executing Court for needful compliance. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-