

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 954 of 2017**

1. Prabhu Dayal Kesharwani, S/o Late Shri Indrajit Prasad Kesharwani, Aged About 70 Years,
 2. Naval Kumar Kesharwani, S/o Late Shri Indrajit Prasad Kesharwani, Aged About 55 Years,
- Both are R/o Village Hasua, Tehsil Kasdol, District Balouda Bazaar Bhatapara (C.G.)

---- **Petitioners**

Versus

1. Govind Ram Sahu, S/o Late Ramprasad Sahu, Aged About 45 Years, R/o Village Hasua, Tehsil Kasdol, District Balouda Bazaar Bhatapara (C.G.)
2. State Of Chhattisgarh: Through the Collector Balouda Bazaar-Bhatapara District-Balouda Bazaar-Bhatapara (C.G.)

-- **Respondents**

For petitioners- Shri V.K. Pandey, Advocate.
For State – Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order****21/03/2018**

Heard.

1. Instant petition is against the order dated 29/11/2017 passed by the Civil Judge, Class-I, Kasdol, District Balouda Bazaar-Bhatapara in Civil Suit No.242-A/2002 whereby application preferred by the petitioner decree holder for execution of judgement and decree for possession of the property was dismissed on the ground that no amount has been deposited by the decree holder to obtain police help.
2. Learned counsel for the petitioners submits that such finding is apparently wrong on the face of the record as amount was already deposited long back on 1/05/2014 which would be evident from the order sheet dated 6/05/2014. He further submits that though decree is of 2003 yet after 15 years have passed, fruits of the decree has not been

materialized. Consequently, order of the executing court dated 29/11/2017 be set aside and decree of the possession of the suit property may be executed forthwith.

3. Perused the record. Record would show that in Civil Suit No. 242-A/2002 a decree was passed on 31/10/2003. Decree was for possession of part of land bearing Khasra No. 961, admeasuring 0.016 hectare situated at Hansua, Tehsil Kasdol, District Raipur which was demarcated and was shown in the decree and the map was made part of the decree. After filing of such execution notice were issued by the executing court i.e. Civil Judge, Class-II, Baloda-Bazar. Record would show that judgement debtor was served on 6/01/2010 and sought time to file reply and from time to time the execution case was adjourned. Eventually after hearing the parties the executing court by an order dated 28/04/2010 passed the order to hand over the vacant possession of the land in question and the possession warrant was issued. Thereafter, notice to obtain possession notice for warrant was paid but eventually decree for possession could not be executed. On many dates though the possession warrant was issued but it came unserved.

4. The order sheet dated 12/03/2012 would show that possession of the land could not be given for the reason that a house exist over such plot. Thereafter, execution case again adjourned from time to time and on 13/09/2012 the executing court observed that since over the land in question superstructure has been raised, therefore by demolition of the superstructure possession warrant to be executed. It was further ordered that the decree holder shall pay the cost of demolition of the superstructure. Again the execution case adjourned to different dates and the order sheet dated 14/02/2013 shows that notice though were issued to the judgement debtor but he refused to accept the same. Consequently, as per the earlier order dated 13/09/2012 executing court observed that

the possession of the land be handed over after demolition of the house and the case was fixed for report of the possession warrant.

5. The order of the executing court would show that on different dates case was adjourned and in the meanwhile possession warrant returned with endorsement that since judgement debtor and others started resisting execution of the warrant, therefore police help was ordered for. In the meanwhile, order sheet dated 6/05/2014 records the fact that decree holder had deposited the amount to be incurred i.e. expenses to obtain police help. Annexure P-5 is the receipt dated 1/05/2014 filed alongwith petition would show that amount of Rs.10,408/- was deposited in respect of the Civil Suit No.242-A/2002 to obtain services of the police to execute the decree. Thereafter too Executing court on the different dates recorded that by demolition of the superstructure, possession of the suit land be handed over to the decree holder.

6. Order sheet dated 3/12/2015 reflects that an application was filed by the decree holder that because of the inaction of the police, the possession warrant could not be executed which was meant to be executed on 6/01/2015 and 7/01/2015, therefore part of the amount of Rs.5204/- may be adjusted in the other civil suit which is pending execution case bearing No. 55-A/2002. The said application on behalf of the decree holder would show his helplessness to get the aid of the Court, wherein despite the deposit of the amount to get the police help, the same was not adequately provided to execute possession decree. On such application the executing court observed that since deposit was made in the Civil Suit No.242-A/2002, therefore such deposit cannot be adjusted meaning thereby it was lamented and fortified that amount of Rs.10,408/- was deposited in the executing court to obtain police help. Order sheet would show that days rolled by but eventually decree remained un-executed. Executing court time and again on the different order sheet

repeated the fact that possession of the vacant land be handed over to the decree holder but the fact as would suggest that it only continued in the order sheet instead of actual happening.

7. Order-sheet dated 20.01.2017 shows that an application was filed by the decree holder/petitioner herein under Order 21 Rule 97 read with Section 74 CPC. It was contended that though the decree was put for execution but the same was resisted by the judgment debtor as such the vacant possession of the property could not be obtained and since resistance has been offered, therefore, the judgment debtor may be taken into custody. Therefore, the provisions of Section 74 CPC may be proceeded. Section 74 of the CPC provides that in case of resistance made by the judgment debtor, the person who resists the same may be detained in the civil prison and the decree holder may be put to the possession of the property. The said application was dismissed by the executing Court on an undertaking given by the judgment debtor that he is not resisting the execution of the decree and he has left possession of the property and after demarcation of the land if the possession of the judgment debtor is found then he himself would remove his possession from the property. On such submission the application under Order 21 Rule 97 read with Section 74 CPC was dismissed.

8. Different order sheet on the different dates continued and reading of the order sheet which was of the intermediate period and in the further order sheet court repeated the fact that possession may be handed over in respect of the suit property. Order sheet also reflects that in between such period certain objection was raised by the judgement debtor questioning identity of the property and order sheet of 25/10/2017 shows that when the Revenue Inspector and Patwari reached to the spot along with the decree holder threat was extended to cause personal assaults to the decree holder therefore the demarcation could not be carried out.

Thereby court under such circumstances repeated the order and directed for demolition of the house which is situated over suit property and give possession of the land.

9. Order sheet dated 14/11/2017 again would show that while decree was being put to execution the wife of the judgment debtor extended threat to immolate herself, therefore decree again remained un-executed and came back. Lastly the executing court dismissed the execution by holding that since the decree holder is not ready and willing to bear the expenses to be incurred for police help, execution was dismissed.

10. Perusal of the entire order-sheet in entirety would show that the decree was passed in the year 2003 and the same is unexecuted till date. The executing Court lastly dismissed the execution by holding that the decree holder is not ready and willing to incur the expenses which is required to get a police help. Earlier order-sheet in the executing Court and the receipts would show that the decree holder had already deposited an amount of Rs.10,408/- on 01.05.2014, the executing Court on the wrong finding of fact dismissed the execution.

11. In the facts of this case, Order 21 Rule 35 CPC, which touches upon the decree of immovable property and Section 51 CPC which describes power of the executing Court to enforce the execution read with Section 74 CPC which deals with the procedure when the resistance is offered in execution of the decree, would be relevant in this case which reads as under:-

“Order 21 Rule 35. Decree for immovable property.- (1)

Where a decree is for the delivery of any immovable property, possession thereof shall be delivered to the party to whom it has been adjudged, or to such person as he may appoint to receive delivery on his behalf, and, if necessary, by removing any person bound by the decree who refuses to vacate the property.

(2) Where a decree is for the joint possession of immovable property, such possession shall be delivered by affixing a copy of the warrant in some conspicuous place on the property and proclaiming by beat of drum, or other customary

mode, at some convenient place, the substance of the decree.

(3) Where possession of any building or enclosure is to be delivered and the person in possession, being bound by the decree, does not afford free access, the court, through its officers, may, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break open any door or do any other act necessary for putting the decree holder in possession.

Section 51. Powers of court to enforce execution.-

Subject to such conditions and limitations as may be prescribed, the court may, on the application of the decree holder, order execution of the decree—

- (a) by delivery of any property specifically decreed;
- (b) by attachment and sale or by sale without attachment of any property;
- (c) by arrest and detention in prison for such period not exceeding the period specified in section 58, where arrest and detention is permissible under that section;
- (d) by appointing a receiver; or
- (e) in such other manner as the nature of the relief granted may require:

Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment debtor an opportunity of showing cause why he should not be committed to prison, the court, for reasons recorded in writing, is satisfied—

- (a) that the judgment debtor, with the object or effect of obstructing or delaying the execution of the decree,—
 - (i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or
 - (ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or
- (b) that the judgment debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or
- (c) that the decree is for a sum for which the judgment debtor was bound in a fiduciary capacity to account.

74. Resistance to execution.- Where the Court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment debtor or some person on his behalf and that such resistance or

obstruction was without any just cause, the Court may, at the instance of the decree-holder or purchaser, order the judgment-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree-holder or purchaser be put into possession of the property.”

12. Reading of the aforesaid provision would show that the executing Court has all the power to deliver the possession of the decree by removing any person bound by the decree who refuses to vacate the property. Section 51 speaks about the powers of Court to enforcement which also includes that the decree may be executed by the arrest and detention in prison and Section 74 specifically speaks about when the resistance is offered, the person who resists may be detained in the civil prison.

13. Rule 232 of High Court Rules – C.G. Civil Court Rules relating to Civil Procedure Code, purports that decree holder may seek for police help by payment of money. The rules stresses upon that Court can help when it is convinced on the existence of grave emergency. In this case, the executing Court already considering the facts had ordered for grant of police help to execute the decree. In any case, the C.G. Civil Court Rules will not override the provisions of CPC wherein the plenary powers have been given to the Court to execute the decree and to enforce the same with order to power to arrest. In such case those powers conferred by C.P.C. cannot be curtailed to have dependency of police alone. The Courts cannot be presumed to be in symbolic collapse state.

14. In the instant case, decree of possession was of the year 2003, the execution case was preferred in the month of September, 2007 and the delivery of possession still hangs in uncertainty. It appears that the real struggle of the decree holder started after the decree was put for execution. The kind of resistance as is reflected that even personal threat to cause hurt to a decree holder and fear atmosphere was created by

judgment debtor by extending threat of immolating herself, which leads to form an opinion that the decree-holder was inundated with resistance and fear and perceived threat along the line of holding status quo.

15. In the like situation, the Supreme Court in the matter of **Narayan Dutt Tiwari Vs. Rohit Shekhar and Another {(2012) 12 SCC 554}** has held thus in paras 23, 24 & 44, which are quoted as under:-

“23. The House of Lords, in *Attorney General V. Guardian Newspapers Ltd.* observed that public interest requires that we have a legal system and courts which command public respect and if the courts were to make orders manifestly incapable of achieving their avowed purpose, law would indeed be an ass. It was further held that the court should not make orders which would be ineffective to achieve what they set out to do.

24. The Supreme Court also, in *K.A. Ansari v. Indian Airlines Ltd.* has held that : (SCC p.170, para 20)

“ 20.....Difficulty in implementation of an order passed by the court, howsoever grave its effect may be, is no answer for its non-implementation.”

44. A Division Bench of the Madras High Court in [*Sri-Ia-Sri Sivasubramanyananda Swami v. Sri-Ia-Sri Arunachalasamy Chidambaram*](#) had the occasion to examine whether the civil courts can issue directions to the police officials for execution and implementation of the orders of the civil court. Relying on [*Jaipur Mineral Development Syndicate v. CIT*](#) it was held that the civil courts in exercise of their inherent power and in the absence of any express or implied prohibition are entitled to pass orders as may be necessary to prevent abuse of the process of the court and to avoid gross miscarriage of justice. It was accordingly held that a litigant who has secured an order from the court is entitled to full benefit thereof and the court is entitled to resort to law enforcement machinery to see that its orders are obeyed. It was further held that no technicality can prevent the court from doing justice in exercise of its inherent powers. To the same effect is the judgment of the Karnataka High Court in *Karisiddamma v. Sanna Kenchamma.*”

16. The Supreme Court in ***Satyawati Vs. Rajinder Sing and Another {(2013) 9 SCC 491}*** while dealing the appeal for execution deprecated the unreasonable delay for the reason that the decree-holder if is unable to enjoy the fruits, the entire effort of successful litigant would be in vain. The Supreme Court has thus observed as under in para 12 to 17, which reads as under:-

“12.It is really agonizing to learn that the appellant-decree- holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant- plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of *The General Manager of the Raj Durbhunga vs. Coomar Ramaput Sing* had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforesaid judgment of the Privy Council in [Kuer Jang Bahadur vs. Bank of Upper India Ltd.](#), the Court was constrained to observe that:

“Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.”

13. In spite of the aforesaid observation made in 1925, this Court was again constrained to observe in [Babu Lal vs. Hazari Lal Kishori Lal](#) in para 29 that:

“29. Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections”

14.This Court, again in [Marshall Sons & Co. \(I\) Ltd. vs. Sahi Oretrans \(P\) Ltd.](#) was constrained to observe in para 4 of the said judgment that:

“4.....it appears to us, prima facie, that a decree in favour of the appellant is not being executed for some reason or the other, we do not think it proper at this stage to direct the respondent to deliver the possession to the appellant since the suit filed by the respondent is still pending. It is true that proceedings are dragged for a long time on one count or the other and on occasion, become highly technical accompanied by unending prolixity at every stage providing a legal trap to the unwary. Because of the delay, unscrupulous parties to the proceedings take undue advantage and person who is in wrongful possession draws delight in delay in disposal of the cases by taking undue advantage of procedural complications. It is also a known fact that after obtaining a decree for possession of immovable property, its execution takes a long time”

15. Once again in [Shub Karan Bubna vs. Sita Saran Bubna](#) at para 27 this Court observed as under :

“ 27.In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin

when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant.”

16. As stated by us hereinabove, the position has not been improved till today. We strongly feel that there should not be unreasonable delay in execution of a decree because if the decree holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of successful litigant would be in vain.

17. We are sure that the Executing Court will do the needful at an early date so as to see that the long drawn litigation which was decided in favour of the appellant is finally concluded and the appellant-plaintiff gets effective justice.”

17. In the instant case, as would appear that as many as 160 dates were passed after the decree of possession was put to execution. In any eventuality the hope of the decree holder towards the Court cannot be belied and it cannot be deemed to a story book land, where it can be said that no one is responsible for anything and finding out the responsibility is the least popular action. The Courts are not expected to sit on the fence when the law is already existing to take things under control and the fruits of decree cannot be allowed to be robbed by litigant managed proceedings. The decree has to be really meaningful and efficient and if the nectar of the decree are not consumed, the litigant may lose the faith in the Court itself.

18. Under the circumstances, instant petition is allowed. The order dated 29/11/2017 is set aside. It is directed that on payment of process possession warrant be issued against the judgement debtor and in case demolition of the superstructure is required, the same has to be carried out. State is directed to provide entire necessary police help to the decree holder. In case of any resistance, it is directed that the person who resists

the execution of decree shall be taken into custody and possession of decree has to be executed. It is further made clear that police help as has been ordered will not be mere formality only and if need be then adequate sufficient police force may also be deployed till the demolition is carried out. The executing court is directed to execute the decree within a further period of 45 days after production of this order before the court.

Sd/-

(Goutam Bhaduri)
JUDGE

gouri/ashu