

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 437 of 2018**

- Ravindra Kesharwani S/o Shri Mahadev Kesharwani, Aged About 53 Years Occupation Hotel Business, Raigarh, R/o Kelobihar Colony, Raigarh, Tahsil And District Raigarh Chhattisgarh.....(Judgment Debtor),

---- Petitioner**Versus**

- Ramchandra Kesharwani S/o Late Raghubir Prasad Kesharwani, Aged About 73 Years Occupation Retired Teacher, R/o Laxmi Lodge, In Front of Gopi Talkies, Tahsil And District Raigarh Chhattisgarh.....(Decree Holder)

---- Respondent

For Petitioner : Shri Vineet Kumar Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****17/05/2018**

1. Heard.
2. The present petition is against the order dated 18.04.2018, whereby the petitioner submits that the learned Executing Court has taken *suo motu* action for demolition of the superstructure which is on the suit property but only the decree for possession has been passed. He further submits that the decree for possession of land has been given and superstructure has not been included in that. Therefore by demolition of superstructure possession could not be given.
3. Perusal of the order shows that when the decree was put to execution, a resistance was made and application under Order 21 Rule 97 CPC was filed

as also an application under Section 47 CPC was preferred. Primarily, resistance of decree has been made under Order 21 Rule 97 CPC and as per Order 21 Rule 103 CPC when the finding arrived at by the executing Court in such application it would be appealable. Therefore, the Court in exercise of power under Article 227 of the Constitution of India cannot go into such issue and go beyond the decree. The perusal of the order shows that the defense advanced by the petitioner that the superstructure was made by the judgment debtor and therefore possession cannot be ordered for is not a part of decree. When the decree for possession has been passed, then in such case, the executing Court has to follow the decree without interpretation of the decree considering the defense which was raised at the time of trial.

4. The petition has no merit. It is accordingly dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu