

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 5799 of 2006**

- D.P.Saraf S/o Katanand Shraf Aged About 48 Years Recent Address R/o Quater No. E-22, 15 Block S.E.C.L. Colony, Korba, Chhattisgarh

---- Petitioner**Versus**

1. B. Krishnamurthi S/o Late Gunda Rao Aged About 38 Years Terotari Manager Bhilai Depo, Bharat Petroleum Corporation Limited, Bijali Nagar, Bhilai-3, District Durg, Chhattisgarh
2. S. Kargawakar S/o Shri Ganpat Rao Aged About 36 Years Terotari Manager, Bhilai Depo, Bharat Petroleum Corporation Limited, Bhijali Nagar, Bhilai-3, District Durg, Chhattisgarh

---- Respondents

For Petitioner : Mr. D. P. Saraf in person.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****21/08/2019**

1. This writ petition has been filed by the petitioner seeking relief that it be declared that the respondents had no authority to bring civil suit, civil appeal or second appeal against the writ petitioner. The petitioner has also sought a declaratory relief from the writ Court that he is entitled to seek execution of decree in his favour. The petitioner has also sought declaration that he is entitled to commission in connection with the sale of petroleum products since 1997. The petitioner has sought issuance of writ seeking explanation of the respondents regarding the source of money deposited in the Court and payments made under bank drafts.
2. The petitioner in person submits that the petitioner had earlier filed civil suit seeking decree of possession and monetary relief against the respondent and that suit was decreed vide judgment and decree dated 01.12.2008 passed in Civil Suit No. 69-A of 1998 by which, though relief of compensation was not granted, the trial Court directed payment of Rs. 2,175/-. Aggrieved by the said judgment to the extent it did not grant relief of possession, the petitioner filed

civil appeal which was allowed vide judgment and decree dated 21.09.1999 passed in Civil Appeal No. 7-A of 1999 by which the learned Lower Appellate Court granted decree of possession also. The respondent filed a miscellaneous civil case before the Appellate Court for setting aside ex parte judgment and decree which was rejected on 29.10.2002. Thereafter, a Miscellaneous Appeal bearing No. MA 855 of 2002 was filed before this Court. That appeal was allowed vide order dated 11.05.2005 and the order of the first Appellate Court was set aside and the lower Appellate Court was directed to rehear the Civil Appeal No. 7A of 1999. Thereafter, the learned Lower Appellate Court finally decided the appeal vide judgment and decree dated 31.12.2005 granting decree of possession in favour of the petitioner. A second appeal (No. 16 of 2006) was preferred by respondent which was also dismissed by order dated 07.08.2007.

3. During the pendency of the second appeal before this court, the petitioner filed instant writ petition seeking declaratory reliefs, stated hereinabove.
4. It appears from the contents of the writ petition that the petitioner seeks to challenge the authority of the respondent to file various cases which have been referred to in the petition which also included the second appeal which was filed by the respondent against judgment and decree dated 31.12.2005 and pending before this Court as Second Appeal No. 16 of 2006, until decided on 07.08.2007.
5. On the face of it, the relief sought by the petitioner in this writ petition cannot be granted in these proceedings. Whether or not, respondents were entitled to file applications could be heard only in those proceedings and not by separate writ petition. Moreover, relief sought by the appellant in this case is directly in teeth of order dated 11.05.2005 passed in MA No. 855 of 2002. In that case, while remanding the case to the learned Lower Appellate Court, this court recorded finding in para-27 of its order that under the provisions of law, not only the power of attorney holder but also the principal officer of the corporation were permitted to verify and sign the pleading and B. Krishna Murthy, who signed the application, was the Territory Manager of the office established at Bhilai by the Bharat Petroleum Corporation limited and this fact has not been disputed by the plaintiffs. Therefore, B. Krishna Murthy had power to sign the application even without power of attorney and at the most, that was required by the corporation to rectify the said action.
6. The declaratory relief sought by the appellant is that it be declared that the appellant is entitled to execute the decree. It goes without saying that if the

appellant is holding a decree in his favour, he is entitled to execute the same in accordance with law. This Court finds that the judgment and decree passed in his favour on 21.12.2005 by the learned Lower Appellate Court was affirmed by this Court vide its judgment dated 07.08.2007 passed in Second Appeal No. 16 of 2006. There is no specific material on record to show that any order, thereafter, has been passed by any courts where the appellant has been declared not entitled to execute the decree passed in his favour.

7. Another declaratory relief sought by the petitioner is essentially a matter of recovery of money of certain claims which would require evidence and it cannot be gone into in writ petition. If the petitioner has certain claims towards payment of commission to him by respondent, he is at liberty to file suit for recovery.
8. The relief sought that respondents should disclose the source of fund is liable to be rejected at the threshold because this has nothing to do with the other reliefs sought in the petition.
9. In the result, the petition is dismissed, however, with liberty to the petitioner to take appropriate remedy for redressal of grievance for which liberty has been granted.

Sd/-

(Manindra Mohan Shrivastava)
Judge