

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 789 of 2019

1. Smt. Sumitra Devi Saraf W/o Motilal Aged About 74 Years
2. Shivkumar Saraf S/o Motilal Aged About 57 Years
3. Deepak Kumar Saraf S/o Motilal Aged About 54 Years
(All are r/o Mahima Niwas, Behind Motilal Service Station, Link Road, Bilaspur District Bilaspur Chhattisgarh)
4. Rashmi Singh W/o Shri Dharmendra Singh Aged About 51 Years 25 Bangla, Maharana Pratap Chowk, Bilaspur Tehsil And District - Bilaspur Chhattisgarh

---- Petitioners

Versus

1. Smt. Vidyawati Saraf W/o Lakhan Lal Saraf Aged About 82 Years
2. Radheshyam Saraf Aged About 63 Years, Father Lakhanlal Saraf
3. Smt. Shivani Saraf Aged About 57 Years, Father Lakhanlal Saraf
4. Smt. Ramani Saraf Aged About 45 Years, Father Lakhanlal Saraf
5. Smt. Meenakshi Saraf Aged About 42 Years, Father Lakhanlal Saraf
6. Purushottam Saraf Aged About 47 Years, Father Lakhanlal Saraf
(All are r/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District - Bilaspur Chhattisgarh)

---- Respondents

For Petitioner : Mr. Sudhir Agrawal , Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18-10-2019

Heard.

1. This petition has been brought under Article 227 of the Constitution of India challenging the order dated 03.10.2019 by which the trial Court has without considering on the application of petitioners, praying for stay of execution proceeding as ordered hearing on all the interim applications pending.
2. Learned counsel for the petitioner submitted that the respondents have filed an execution case on the basis of decree in Civil Suit No.10A/1999. The petitioners have raised a dispute regarding the executability of

decree by filing a separate application under Section 47 of C.P.C. which has been registered as M.J.C. No.253/2019. During the pendency of this application, the petitioners filed an application praying for stay of execution proceeding on the ground that one transfer petition is pending before the High Court registered as T.P.C. No.69/2019 and secondly, on the ground that the application under Section 47 of C.P.C. should be decided first before proceeding with the execution. The learned counsel for petitioners had brought to the notice of the execution Court, the grounds raised in the application for stay, even then the Execution Court has passed order that all the pending applications shall be heard and for that, date has been fixed. Because of which, the petitioners are aggrieved.

3. Considering on the submissions made and also perused all the documents including the order sheets of the Execution Court and also the application for stay filed by the petitioner side and for the reason that the executability of the decree has been challenged by a separate petition by the petitioners and also for the reason that one transfer petition is pending before this Court, I am of this opinion that the Execution Court should have to firstly considered and decide the application for grant of stay in the execution proceeding. Therefore, this petition is disposed off at motion stage. The order dated 03.10.2019 is hereby set aside and the Execution Court is directed to consider and decide the application filed by the petitioners for staying the execution proceeding before proceeding further with the said execution case.

4. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge