

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 886 of 2019

Smt. Shyamkunwar, W/o. Dwasram Rajwade, Aged About 62 Years, R/o. Village Bhathikunda, Tahsil Katghora, District Korba, At Present R/o House of Mohan Rajwade, School Muhalla, Village Kanaki, Tahsil Kartala, District Korba Chhattisgarh

---- Petitioner

Versus

1. Lochan Prasad, S/o. Late Puniram Rajwade, Aged About 61 Years, R/o. Village Bhathikunda, Tahsil Katghora, District Korba, Chhattisgarh Adhar No. 472787042775 Mob. No. 9131026439
2. State Of Chhattisgarh, Through : District Collector Korba, District Korba Chhattisgarh
3. Anand Ram, S/o. Devsai, R/o. Village Bhathikunda, At Present R/o House of Mohan Rajwade, School Muhalla, Village Kanaki Tahsil Kartala, District Korba (Chhattisgarh) (Dead) Through L.Rs.
 - 3.(a) Lilakram S/o Late Anandram, Aged About 55 Years
 - 3.(b) Itwari S/o Late Anandram, Aged About 50 Years
 - 3.(c) Heera Lal S/o Late Anandram, Aged About 50 YearsNo. a to c all are resident of house of Mohan Rajwade, School Muhalla, Village- Kanaki, Tahsil – Kartala, District – Korba (C.G.)

-----Respondents

For Petitioner

: Mr. Vinod Tekam, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

05/12/2019

1. This petition has been brought being aggrieved by the order dated 04.10.2019, passed by the learned First Additional Sessions Judge, Katghora, District -Korba (C.G.) in Civil Appeal No.35-A/2019, whereby

the learned appellate Court has allowed the application under Order 41 Rule 5 of C.P.C. ex-parte.

2. It is submitted that the respondents are in possession of the suit land. It is submitted that the petitioner should have been afforded an opportunity for opposing the application for grant of stay of the execution proceeding. Therefore, the orders suffers from illegality, which may be set-aside.
3. Perused the impugned order. On the date of passing of this order, the petitioner/plaintiff, who is decree holder was not served with any notice. Of-course the appellate Court has power and authority under Order 41 Rule 5 of C.P.C. to pass an order staying the execution proceeding in the decree which is challenged before the appellate Court. But the rule of natural justice applies in all cases and in all the circumstances, even if, there is no specific provision present in this respect. Therefore, according to the rule of natural justice, it was the duty on the part of the appellate Court to give an opportunity to the petitioner/decreed holder to oppose the application before making the order passed for stay of execution absolute.
4. From perusal of the impugned order, it is found that the application for stay of execution has been allowed finally and no order was passed even for service of notice upon the petitioner for submitting reply and arguing against the application. Therefore, the impugned order which is in nature of ex-parte final order is not sustainable.
5. Accordingly, the petition is disposed off at motion stage and the impugned order dated 04.10.2019, passed by the learned First Additional Sessions Judge, Katghora, District -Korba (C.G.) in Civil Appeal No.35-A/2019, is set-aside and the application of the

respondent under Order 41 Rule 5 of C.P.C. is now restored. The learned appellate Court is directed to reconsider and decide the application for stay of the execution proceeding after giving opportunity of hearing to both the parties.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram