

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 112 of 2020

1. Smt. Sumitra Devi Saraf, Wd/o Motilal Aged About 74 Years R/o- Mahima Niwas, Behind Motilal Service Station Link Road, Bilaspur, District Bilaspur, Chhattisgarh.
2. Shivkumar Saraf, S/o Motilal, Aged About 57 Years R/o- Mahima Niwas, Behind Motilal Service Station Link Road, Bilaspur, District Bilaspur, Chhattisgarh.
3. Deepak Kumar Saraf, S/o Motilal ,Aged About 54 Years 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, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.
2. Radheshyam Saraf, S/o Lakhanlal Saraf, Aged About 63 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.
3. Smt. Shivani Saraf D/o Lakhanlal Saraf Aged About 57 Years R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.
4. Smt. Ramani Saraf, S/o Lakhanlal Saraf, Aged About 45 Years, R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.
5. Smt. Meenakshi Saraf, D/o Lakhanlal Saraf, Aged About 42 Years, R/o

Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.

6. Purushottam Saraf, S/o Lakhanlal Saraf, Aged About 47 Years R/o Geetanjali Nagar, Kashyap Coloney, Gali No. 5, Bilaspur Tehsil And District- Bilaspur, Chhattisgarh. Mobile No. 98261-48080.

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For petitioner	:	Mr. Sudhir Agrawal, Advocate.
For respondent No.1	:	Mr. Aishwarya Pandey, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

05/02/2020

1. This petition has been brought being aggrieved by the order dated 8.1.2020 (Annexure P-1) passed by the District Judge, Bilaspur, Chhattisgarh in Execution Case No.14A/2019.
2. It is submitted by the counsel for petitioners that petitioners are defendants in Civil Suit No.10A/1999 which has been decreed against them by judgment dated 12.5.2000. This judgment and decree was challenged before this Court in First Appeal No.488/2000 which has been dismissed on 20.2.2019. Thereafter, the judgment of this Court was challenged before the Supreme Court in SLP(C) NO.8093/2019 which has also been dismissed.
3. It is submitted that in the execution proceedings filed by the respondents, the petitioners have filed an application under Section 47 of CPC along with an application for stay of further proceeding of execution case till the application under Section 47 of CPC is decided for the reason that one of the reliefs granted to the respondents is against the provision of law, therefore, the decree is not executable for that relief. The learned trial Court rejected the application filed by the petitioners under the provisions of Order 20 Rule 5 read with Section 151 of CPC and refused to stay the execution proceeding for recovery of arrears of penal rent. In support of their case, the petitioners relied

upon the judgments of Supreme Court in the matters of State of M.P. v. Mangilal Sharma reported in (1998) 2 SCC 510; Sunder Dass v. Ram Parkash reported in AIR 1977 SC 1201 & National Insurance Company v. Keshav Bahadur & others, reported in 2004 AIR SCW 737.

4. Learned counsel for respondents submits that after filing of application under Section 47 of CPC before the Executing Court, the petitioners themselves felt aggrieved and filed a writ petition before this Court, which came to be registered as WP227 No.627/2019. The said writ petition came to be disposed off on 5.9.2019 with a direction to the Court below to separately register the application filed under Section 47 of CPC as 'MJC'. Subsequent to which, the said application was registered as MJC and dismissed against which writ petition bearing WP227 No.914/2019 was preferred before the High Court. The said writ petition has been allowed; the order rejecting application for grant of stay has been set aside and a conditional stay was granted in favour of petitioners, making it clear that execution of money part of decree is not stayed. In such a situation, now the petitioners cannot raise the same plea and ground to get an order of stay of the entire execution proceeding.
5. I have heard both the parties and perused the documents filed along with petition.
6. It is not denied by the petitioners that the order dismissing MJC was challenged by the petitioners by way of WP227 No.914/2019 which has been allowed with modification and clearly no stay has been granted in that case for the money part of the decree. No liberty was granted to the petitioners to file separate application for stay of execution proceeding on the same grounds. Therefore, the matter of stay of execution proceeding has already been raised in the separate petition and has been decided by this Court and that decision operates as *res judicata* in this case also. The argument advanced by the counsel for the petitioner on the point of non-executability of decree, can be considered in the application filed under Section 47 of CPC by them, therefore, no finding can be given on that point.
7. In view of above, I am of this opinion that this petition has no

substance, the same is liable to be dismissed and is hereby dismissed at the motion stage itself.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha