

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 180 of 2020

1. Gopal Agrawal S/o Late Suresh Agrawal, Aged About 50 Years R/o Chowdhary Mohalla, Mangal Bazar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
2. Prakash Agrawal S/o Late Suresh Agrawal, Aged About 46 Years R/o Chowdhary Mohalla, Mangal Bazar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
3. Govind Agrawal S/o Late Ashok Kumar Agrawal, Aged About 32 Years R/o Chowdhary Mohalla, Mangal Bazar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh

---- Petitioners

Versus

1. Smt. Mani Jain D/o Shri Premchand Jain, Aged About 45 Years R/o Government Manorog Hospital, Indore, Shri Rajkumar Jain S/o Late Shri Komalchand Jain, Aged About 44 Years, R/o Pendra Road, Tahsil Pendra Road, District Bilaspur Chhattisgarh.....Decree Holder, District : Bilaspur, Chhattisgarh
2. Shri Ratanchand Jain S/o Late Shri Bhaiyalal Jain, Aged About 65 Years R/o Pendra Road, Tahsil Pendra Road, District Bilaspur Chhattisgarh.....Decree Holder, District : Bilaspur, Chhattisgarh
3. Shri Rajkumar Jain S/o Late Shri Komalchand Jain, Aged About 40 Years R/o Pendra Road, Tahsil Pendra Road, District Bilaspur Chhattisgarh.....Decree Holder, District : Bilaspur, Chhattisgarh
4. Smt. Keshar Bai Agrawal Wd/o Phattechand, Aged About 70 Years R/o Chowdhary Mohalla, Mangali Bazaar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
5. Smt. Kusum Devi Agrawal W/o Suresh Agrawal, Aged About 61 Years R/o Chowdhary Mohalla, Mangali Bazaar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
6. Manish Agrawal S/o Suresh Agrawal, Aged About 35 Years R/o Chowdhary Mohalla, Mangali Bazaar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
7. Rajkumar Agrawal S/o Late Phattechand Agrawal, Aged About 53 Years R/o Jain Mandir Road, Kranti Nagar Bilaspur, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
8. Subhash Agrawal S/o Phattechand Agrawal, Aged About 46 Years R/o Aabha Jewelers Sarafa Gali Sadar Bazaar Bilaspur, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
9. Smt. Geeta Devi Agrawal, Aged About 45 Years R/o Chowdhary Mohalla, Mangali Bazaar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh
10. Gagan Agrawal S/o Late Ashok Kumar Agrawal, Aged About 27 Years R/o Chowdhary Mohalla, Mangali Bazaar, Pendra Road, District Bilaspur Chhattisgarh.....Judgment Debtor, District : Bilaspur, Chhattisgarh

11. Manoj Agrawal @ Yadu S/o Phattechand, Aged About 47 Years Gopal Hardware Amarkantak Road, Pendra Road, District Bilaspur Chhattisgarh.....Judgement Debtor, District : Bilaspur, Chhattisgarh
12. Rajesh Agrawal S/o Late Phattechand, Aged About 40 Years R/o Chhattisgarh Saitific And Surgical Works Brahaspati Bazaar Bilaspur, District Bilaspur Chhattisgarh.....Judgement Debtor, District : Bilaspur, Chhattisgarh
13. Smt. Maya Agrawal W/o Shri Amar Agrawal, Aged About 46 Years R/o Grihani Stores Putrishala Road Kharshiya, District Raigarh Chhattisgarh.....Judgement Debtor, District : Raigarh, Chhattisgarh
14. Smt. Mamata Goyal W/o Shri Tarachand Goyal, Aged About 44 Years Aanand Raise Mil, Raipur Road Dhamtari, District Dhamtari Chhattisgarh.....Judgement Debtor, District : Dhamtari, Chhattisgarh
15. Dr. Nemchand Jain S/o Late Shri Bhaiyalal Jain, Aged About 75 Years R/o Char-A-Ankur, Das Lord Sinha Road, Kolkata, District : Kolkata, West Bengal
16. Shri Sumerchand Jain S/o Late Shri Bhaiyalal Jain, Aged About 70 Years Retired Army Employee, R/o Bangalore, District : Bangalore Rural, Karnataka
17. Shri Vimal Kumar Jain S/o Late Shri Komalchand Jain, Aged About 50 Years Businessman R/o Pendra Road, Tahsil Pendra Road, District Bilaspur Chhattisgarh.....Judgement Debtor, District : Bilaspur, Chhattisgarh
18. Shri Ajit Kumar Jain S/o Late Shri Komalchand Jain, Aged About 40 Years R/o Pendra Road, Tahsil Pendra Road, District Bilaspur Chhattisgarh.....Judgement Debtor, District : Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	: Shri K.A. Ansari, Senior Advocate with Shri Aman Ansari, Advocate.
For Respondents	: Shri P.R. Patankar, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

28-02-2020

1. Heard.
2. This petition has been brought challenging the order dated 20.12.2019, passed in Execution Case No.1-A/ 2001 by the Learned Civil Judge, Class-I, Pendra Road and also praying for an enquiry into the interpolations made in the execution proceedings.

3. It is submitted by learned Senior counsel for the petitioners that in Civil Suit No. 1-A of 2001, the judgment and decree was passed on 13.5.2016. The suit was decreed in favour of the respondents and in the relief clause the relief of possession was granted to the respondents with a specific direction that the suit map shall be a part of the decree. The execution case has been filed on 15.2.2017 without submitting the copy of the suit map and even without presence of suit map the learned Executing Court has repeatedly ordered for issuance of warrant of possession. Despite the fact that the possession had to be delivered in accordance with the relief granted and in accordance with the details given in the suit map. Learned Execution Court has acted in an arbitrary manner, which needs an enquiry. The prayer made by the petitioners to stay the execution proceeding has been arbitrarily rejected by the order dated 28.12.2019. It is also argued that under Order XX Rule 6 of the CPC, the parties have entitlement to object the decree prepared, before it is signed by the Presiding Officer of the Court and that opportunity was not made available to the petitioner as the decree has been signed on the same date. Hence, the decree so passed is not executable and it is prayed that the petition be allowed and the execution proceedings against the petitioner be quashed.
4. Learned counsel for the respondents submits that the application for execution was filed with a copy of decree, which was not certified, therefore, on the orders passed by the Court, the respondents have presented the certified copy of the map which was a part of the decree. It is further submitted that the petitioners' side is making various pretext that the decree against them is not executed. Although, the petitioners have filed an appeal in the Appellate Court but there is no stay order operating. The execution proceeding is pending since about four years.

There is no substance in the argument presented on behalf of the petitioners, therefore, it is prayed that the petition be dismissed.

5. Heard counsel for both the parties and perused the documents present on record.
6. On perusal of the order-sheets of the execution proceedings, it is found that the execution application was presented on 15.2.2017, notices were served upon the judgment-debtors and because of the non-appearance the Court proceed the *ex parte* on 28.7.2017. The Execution Court after considering on application directed the petitioner to file a certified copy of the judgment and decree on 3.11.2017 and then the certified copy of the judgment and decree was produced before the Court on 13.11.2017. Subsequent to that, further particulars were also sought by the Court and thereafter, the orders were passed for issuance of possession warrant. First of such orders were passed on 15.12.2017 which has continued on numerous occasions on numerous dates. Report of process server was received that the petitioners/ judgment debtors were obstructing the execution of decree, on which the enquiry was initiated. In the meanwhile, the petitioners gave appearance before the Court on 6.11.2017 by filing the application under Order IX Rule 7 read with Section 151 of the CPC. The *ex parte* proceeding was set aside by the order dated 10.12.2019. Subsequent to which, the application was filed by the petitioner under Section 151 of the CPC praying that the execution application was filed without the copy of decree, which has been rejected by the Execution Court.
7. This Court has observed and mentioned in this order, that in the proceeding that was taken up, the certified copy of the decree and map were not filed from the very beginning of the execution application, which were filed later on and then the Court has passed order for

issuance of possession warrant and arrest warrant. Only for the reason that the map attached with the decree was not filed with an initial stage, the decree against the petitioner has not become in-executable. Hence, I am of this view that the learned Execution Court has not committed any error in the execution proceeding that has come up so far.

8. As regards, the other objection raised that the petitioners had no opportunity to object to the preparation of decree does not find any place. Order XX Rule 6 of the CPC provides about preparation of the decree and Order XX Rule 7 of the CPC provides for the date of decree, which clearly mentions that the decree shall bear the date on which the judgment has pronounced. Therefore, the signing of decree mentioning the date of judgment is in accordance with law. This argument has been raised without any substance or presenting any document in that respect, therefore, this objection raised is not at all suspicion.
9. After considering all the submissions made from both the sides and the facts and circumstances of this case, I am of this view that this petition is without any substance which is liable to be dismissed.
10. Accordingly, this petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge