

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**WP227 No. 987 of 2018**

1. Sharda Mahawar, Wd/o Late Niranjana Lal Mahawar, Aged About 79 Years, R/o 26 Central, Avenue Choubey Colony, Raipur, District-Raipur, Chhattisgarh.
2. Manish Mahawar, S/o Late Niranjana Lal Mahawar, Aged About 51 Years, R/o 26 Central, Avenue Choubey Colony, Raipur, District-Raipur, Chhattisgarh.
3. Sachindra Mahawar, S/o Late Niranjana Lal Mahawar, Aged About 49 Years, R/o 26 Central, Avenue Choubey Colony, Raipur, District-Raipur, Chhattisgarh.
4. Kriti Vishwakarma, W/o Shailesh Vishwakarma, Aged About 41 Years, R/o Anshan Tonship, Indore, Madhya Pradesh.....(Plaintiffs Decree Holder).

---- Petitioners

**Versus**

1. Nirmal Mahawar, S/o Late U.L. Mahawar Aged About 64 Years R/o First Floor, R/o 26 Central Avenue Choubey Colony, Raipur, District-Raipur, Chhattisgarh.
2. Smt. Shanti Devi, D/o Late U.L. Mahawar Aged About 67 Years R/o First Floor, R/o 26 Central, Avenue Choubey Colony, Raipur, District-Raipur, Chhattisgarh.....(Defendants).

---- Respondents

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| For petitioners | : | Mr. Manoj Paranjpe & Mr. Anurag Singh,<br>Advocates. |
| For respondents | : | Mr. Anup Majumdar & Mr. Saket Pandey,<br>Advocates.  |

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

**23/11/2020**

1. This petition under Article 227 of the Constitution of India has been brought praying for quashment of the order dated 15.10.2018 passed by the executing Court in Execution Case No.2808/2017 and also for

issuance of directions.

2. It is submitted by the learned counsel for petitioners that petitioners have in their favor judgment and decree dated 22.6.2017 passed in Civil Suit No.45A/2002. Respondent No.1 preferred First Appeal No.399/2017 before this Court, in which a Division Bench of this Court vide order dated 25.6.2018 passed a conditional stay order for the recovery of the disputed house, on condition that the monetary part of the decree will be complied with by respondent No.1 within a period of one month. It was also ordered that no third party interest shall be created by any of the parties without the leave of the Court. Respondent No.1 then sought extension for compliance of the order dated 26.6.2018. On 27.9.2018, learned counsel for respondent No.1 made a statement that the condition imposed upon respondent No.1 vide order dated 25.6.2018 has been complied with. As the proof of compliance was not presented, therefore, the Court ordered that in case the compliance has not been made, then the same be complied with within one month from that date and the interim order dated 25.6.2018 shall inure to the benefit of both the parties in case the compliance is not made. The interim order shall bind the applicant only from alienating or creating any third party interest on the suit house.

Learned Counsel further submits that on failure of the respondent No.1 to comply with the orders of the appellate Court passed in first appeal, the petitioners moved the executing Court making a prayer for execution of the whole decree on the ground that respondent No.1/ judgment debtor has not complied with conditional stay order passed by the High Court, as he has failed to give 80 tolas gold, therefore, the whole decree has become executable. However, the learned Executing Court vide order impugned has issued attachment warrant only for recovery of cash amount and 80 tolas gold.

It is submitted that the respondent No.1 has made partial compliance by making payment of Rs.1 Lakh with interest and other part of the same money decree regarding handing over of 80 tolas jewelery in terms of oral partition on 7.12.1994 has not been complied with. It is submitted that due to non-compliance of the money part in

accordance with order of this Court, no stay order is operative against the petitioners, hence, the petitioners are entitled for execution of the whole decree. Reliance has been placed on the judgment of Supreme Court in the case of V. Ramamswami Ayyangar and others v. T.N.V. Kailasa Thevar, reported in AIR 1951 SC 189, Gurudev Singh v. Narain Singh, reported in (2007) 14 SCC 173 and Firm Rajasthan Udyog v. Hindustan Engg. & Industries Ltd., reported in 2020(6) SCC 660, on this point that the executing Court cannot go beyond the decree.

3. Learned counsel for respondent No.1 submitted that the order of partial stay of execution passed by the High Court on 25.6.2018 speaks of satisfying the monetary part of the decree only. The other reliefs namely handing over of possession of disputed house and handing over of 80 tolas of gold are not within the scope of money decree. The order dated 25.6.2018 does not make any specific mention of the relief specifying the decree for handing over of gold to the petitioners. The respondent No.1 has made compliance of the order by making payment of cash amount along with the interest, which is not in dispute, therefore, the stay has become operative for the rest of the reliefs in the decree. It is submitted that that this petition is misconceived infact the petitioners are required to apply for vacating the stay order in the first appeal, hence, there is no substance in the present petition, hence, this petition be dismissed.
4. In reply, it is submitted by the learned counsel for the petitioners that the decree against the respondent No.1 is very clear with respect to grant of relief of possession and monetary relief. The monetary relief includes handing over of gold jeweleries, therefore, there is no confusion in the same. The petitioners be granted relief.
5. I have heard both the parties and perused the documents on record.
6. The decree in favor of the petitioners in Civil Suit No.45A/2002 is as follows:-

“1.Plaintiff is entitled to recover possession of the First Floor of Property situated at 26, Choubey Colony, Raipur. Defendants are directed to handover the same within two months the same from today;

2.Plaintiff is entitled to recover Rs.1,00,000/- with interest @6% p.a.w.e.f. 15.3.95 till its realization and 80 Tolas of gold jewellery in terms of 'Acknowledgment of oral partition' dt. 07.12.1994 from defendant No.1;

3.In the fact and circumstances, Plaintiff shall be entitled to recover costs of the suit from the defendants.”

7. The order of this Court in First Appeal NO.399/2017 dated 25.6.2018 is as follows:-

“After hearing learned counsel for the parties, we hereby direct that the impugned judgment and decree to the extent of recovery of possession of the House shall remain stayed. However, there is no stay on the monetary part, the appellant will have to satisfy the monetary part within a period of one month. The said recovery of possession would only subject to compliance of the monetary part of the decree as directed by this Court.”

8. The order of extension dated 27.9.2018 is a under:-

“ I.A. No.03 under Section 148 read with section 151 of the CPC for extension of time period for compliance of order dated 25.06.2016.

It is stated at the bar that the conditions imposed on the appellant while allowing interim relief on 25.06.2018 has been complied with. However, the appellant has not filed any proof of compliance, therefore, the application is disposed of with a direction that if the appellant has not yet complied with the condition, he may do so within one month from today. If there is compliance within one month, the interim order dated 25.06.2018 shall inure to the benefit of both the parties and in the event the compliance has not been made the interim order shall bind the appellant only for not creating third party interest or alienation of the suit house.

I.A. No.03 is disposed of in the above stated terms.”

9. The case laws cited by the petitioners' side appear to be of some relevance, as the question that is present here is whether the stay order passed in favor of the respondent No.1 has become effective or not.
10. On perusal of the order dated 25.6.2018, it is clear that a Division Bench of this Court had in clear terms ordered that the impugned judgment and decree to the extent of recovery of the house shall remain stayed and it was made clear that there will be no stay on the

monetary part which has to be complied with within a period of one month. The specific words in the order make it clear that no stay was granted for the relief of handing over of 80 tolas gold by respondent No.1 to the petitioners.

11. Another order dated 27.9.2018 mentions that if the compliance of order is not made then the interim order dated 25.6.2018 to this extent that no third party interest shall be created or alienation of the suit house shall not be made, shall be binding on the appellant i.e. respondent No.1 herein.
12. This Court cannot go into details. However, from the interpretation of the orders passed by a Division Bench of this Court, it is clearly found that there was no stay order for the relief of handing over of 80 tolas gold by respondent No.1 to the petitioners, hence, that part of the decree had to be complied with to avail benefit of the stay order. As it is clear that this part of the decree about handing over gold articles is pending for execution, hence, it may be said that the conditional stay order passed on 25.6.2018 has not come into operation, for any further clarification the Respondent No.1 shall have to approach the Court hearing the appeal.
13. The impugned order does not speak of making any interpretation of the orders of the High Court in FA No.399/2017, therefore, there is no requirement to quash the same. However, the petitioners are at liberty to proceed with the execution in the trial Court, which may be guided by the observations made in this order.
14. Accordingly, the petition is disposed off.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge