

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 198 of 2021

Smt. Hemlata Sahu, W/o. Laxminarayan Sahu, aged about 21 years, R/o. Lalbag Ward No. 20, Rajnandgaon at present resident of Mahendra Nagar, Near Royal Kids School, Tahsil and District Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

1. Smt. Rekha Jain, W/o. Ratan Kumar Jain, aged about 35 years, R/o. Vrindavan Colony, Tahsil and District Rajnandgaon Chhattisgarh.
2. State of Chhattisgarh, Through : The Collector, Rajnandgaon Chhattisgarh.

-----Respondents

For Petitioner	: Mr. Goutam Khetrapal, Advocate
For Respondent No.1	: Mr. Priyank Rathi, Advocate
For State-Respondent No.2.	: Mr. Gurudev I. Sharan, Govt. Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

24/03/2021

1. This petition has been brought being aggrieved by the order dated 25.01.2021 and 23.02.2021, passed by the learned Additional District Judge, Rajnandgaon in Execution Suit No. 03/2000, whereby the objection raised by the petitioner has been dismissed and opportunity was granted to the respondent No.1/decree holder to cure the defect in the application for execution.
2. It is submitted by the learned counsel for the petitioner that Order 21 Rule 11 (2) of C.P.C. clearly provides that a written application shall be filed for execution, in which the verification by the applicant or some other persons on his behalf is necessary. The

execution application filed by the respondent No.1 was without verification, therefore, the same was liable to be dismissed. However, the Court may have granted opportunity to the respondent No.1 to file a fresh execution application, therefore, the impugned order is incorrect and against the provisions of law, which is not sustainable.

3. Counsel for the respondent No.1 opposes the petition and the submission made in this respect. It is submitted that the petitioner, who is the judgment debtor in the execution case, is adopting delaying tactics. The defect that has been pointed is a curable defect, therefore, the executing Court has not committed any error. Relying on the judgment of High Court of Delhi in **International Security and Intelligence Agency Limited Vs. Municipal Corporation of Delhi & Ors**, reported in **2002 (62) DRJ 100**, it is submitted that in the similar case, the Court had granted opportunity to the decree holder to rectify the defect in the execution application.
4. In reply, it is submitted by the counsel for the petitioner that the respondent No.1 was required to file application for amendment as it is provided under Order 21 Rule 17 (2) and (3) of C.P.C. as no such application has been filed, therefore, the execution case was liable to be dismissed.
5. I have heard the learned counsel for the parties and perused the documents placed on record.

6. Order 21 Rule 17 of C.P.C. clearly provides that on receiving application for execution of a decree under Order 21 Rule 11 (2) of C.P.C., the Court shall ascertain whether such of the requirement as provided for filing of the application have been complied with and if any defect is found, then a time may be granted for remedying the same. It is further provided in Sub-rule 2 (1A) that if the defect is not so remedied, the Court shall reject the application. Further Rule 2 provides that when application is amended under the provisions of sub-rule (1), it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented.
7. On perusal of the impugned order and the other orders from the copy of order sheets, it is found that the execution Court has followed the procedure as laid down in the Order 21 Rule 17 of C.P.C. and directed rectification of the defect, which has been rectified accordingly and also has been accepted by the executing Court. There is no need to go in further technicalities.
8. Hence, this petition has no force, which is dismissed at admission stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge