

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 422 of 2019**

1. Deepak Jain, S/o Shri Hazarimal Jain, Aged About 38 Years, R/o Village-Dondilohara, Tahsil-Dondilohara, District-Balod, Chhattisgarh.

---- Petitioner**Versus**

1. Gajendra Prasad Sharma, S/o Late Shri Raheshya Sharma, R/o Ward No. 11, Dondilohara, Tahsil-Dondilohara, District-Balod, Chhattisgarh.
2. State of Chhattisgarh Through Present District Magistrate, Balod, District : Balod, Chhattisgarh

---- Respondents

For Petitioner	: Mr. Sunil Verma, Advocate.
For Respondent No.1	: None.
For State/Respondent No.2	: Mr. Alok Nigam, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**Order On Board****02/08/2021**

1. This petition has been brought being aggrieved by the order dated 5.4.2019 passed by Additional Session Judge, Balod in Civil Execution Case No.13A/2011.
2. Petitioner is the decree holder in Civil Suit No.13A/2011 passed by judgment dated 3.12.2011, by which he was granted relief of specific performance of contract against the respondent No.1. This judgment and decree was challenged in First Appeal No.7/2012 before this High Court which has been disposed off by judgment dated 27.7.2018 and dismissed.
3. The petitioner/plaintiff had filed an application under Section 151 of the Code of Civil Procedure (for short 'CPC') praying for adjustment of the

costs of the suit as ordered by the trial Court in the consideration price, which is to be paid to respondent No.1. The respondent No.1 filed a separate application praying, that in the appellate order of the High Court the parties have been directed to bear their own costs, therefore, the costs of suit added in the execution application, that is Rs.99,355/- be struck off and the petitioner be directed to make payment of whole consideration price. The learned Execution Court has passed the impugned order by allowing the application of the respondent No.1.

4. It is submitted by the counsel for the petitioner that the impugned order is erroneous and against the provisions of law. The appellate order mentions only of the costs borne in an appeal by the parties, whereas the judgment and decree of the trial Court has been upheld, therefore, the impugned order is unsustainable.
5. Respondent No.1 is unrepresented, although the notice served upon him.
6. Learned State counsel makes formal objection.
7. I have heard both the parties and perused the documents on record.
8. In the judgment and decree of the trial Court, the relief that was granted to the petitioner/plaintiff is very clear that the respondent No.1 was to bear the costs of the suit of the plaintiff. The appellate order dated 27.7.2018 passed in FA No.7/2012 mentions about dismissing of the appeal and affirming the judgment and decree passed by the trial Court. There was a direction that the parties shall bear their respective costs. This direction by the appellate Court to the parties to bear their own costs shall be referred to the costs in appeal only. The learned appellate Court has very clearly upheld the judgment and decree of the

trial Court in whole, therefore, order of costs in the judgment and decree of the trial Court is also affirmed by the order of the appellate Court, hence, the impugned order passed by the Execution Court is erroneous and arbitrary. On the basis of this finding, this petition is allowed. The impugned order dated 5.4.2019 in Execution Case No.13A/2011 is hereby set aside. The learned executing Court is directed to proceed with the execution case in accordance with law.

Sd/-

(Rajendra Chandra Singh Samant)

Judge

Nisha