

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 55 of 2017**

Joint Director, subsidiary Intelligence Bureau, MHA, government of India, HN 1522, Opposite Government ITI, Post Officer Ravi Gram, Shyam Nagar, District Raipur (C.G.) Through its Deputy Central Intelligence Officer DCI office, Sarkanda Bilaspur, District Bilaspur (C.G.).

---- Applicant**Versus**

1. Smt. Kumkum Verma, W/o Shri Shishir Verma, aged about 43 years, R/o Vinoba nagar, Police Station and Post Civil Lines Bilaspur, civil & Revenue District Bilaspur (C.G.).
2. State of Chhattisgarh, through Collector, Bilaspur, District Bilaspur (C.G.).
3. Superintendent of Police Bilaspur, District Bilaspur (C.G.).

---- Respondent

For Applicant	:	Mr. Ramakant Mishra, Adv.
For Respondent for Respondent No.1.	:	Mr. Manoj Paranjpe, Advocate
For State	:	Mr. Seema Dixit, PL

Hon'ble Shri Justice Deepak Kumar Tiwari
Order on Board

29/10/2021

Heard.

1. This civil revision has been filed under Section 115 of the Civil Procedure Code against the order dated 29/03/2017 passed by 10th Civil Judge, Class-II, Bilaspur in Execution Case No. 139A/2008 (Smt. Kumkum Verma v. State of C.G. & Others), whereby the learned Execution Court has directed for issuance of execution warrant and directed for removal of constructed wall.

2. Brief facts of the case are that on 26/09/2008, the trial Court passed a decree in favour of respondent No.1 that respondent No.1 has a right to access over the defendant land in which 20 feet wide road has been constructed, and also restrained the applicant from intervening with the said road. When the applicant not allowed respondent No. 1 to access to the said road, respondent No.1 filed an application under order 21 Rule 32 of the CPC and the said application has been rejected vide order dated 20/03/2014. Against the said order, respondent No. 1/Plaintiff filed a civil revision bearing No. CR No. 103/2014 before this Court. This Court vide order dated 21/07/2016 while allowing the revision, directed the Executing Court to restore the application under Order 221 Rule 32 of the CPC and to make proper inquiry by affording proper opportunities to the parties and then to pass an order. Thereafter, the impugned order has been passed.
3. The point for determination before this Court is that whether the impugned order is legal, proper and justifiable.
4. After going through the proceeding drawn after the order of this Court, which had specifically directed to uphold proper inquiry and thereafter was directed to pass afresh order, but it is explicit that without conducting any inquiry, the learned Executing Court has passed the impugned order, dehors the legal provision of Order 21 Rule 32 of the CPC, therefore, the impugned order is not maintainable and the Executing Court has again committed material irregularities in passing the impugned order, so it is liable to be set-aside.

5. Accordingly, the impugned order is set-aside. The application filed by the plaintiff/respondent No. 1 before the Executing Court, is again restored for fresh consideration. Executing Court is directed to hold proper inquiry by affording sufficient opportunities to the parties and thereafter pass afresh order within four months from the date of receiving of the certified copy of this order, in accordance with law.
6. Accordingly, the revision is allowed to the extent indicated above.

Sd/-
(**Deepak Kumar Tiwari**)
Judge