

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.673 of 2018

- Dr. T. N. Dubey (Dr. Triyugi Narayan Dubey) Aged About 58 Years, R/o Geetanjali Nagar (Kashyap Colony) Street No. 06, Near Old Bus Stand Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Collector, Janjgir Chmapa Chhattisgarh
2. Late Anant Ram S/o Late Ramprasad Tiwari, Through Lrs.
 - (A) Ramgopal Aged About 65 Years
 - (B) Ram Sanahi Aged About 56 Years
 - (C) Ram Lochan Aged About 53 Years
 - (D) Dilip Aged About 48 Years
 - (E) Manoj Aged About 41 Years
 - (F) Geeta Devi W/o Hari Narayan Pandey Aged About 61 Years
 - (G) Kanti Devi Aged About 51 Years(Respondents No.2(A)- 2(G) are R/o Arasmeta, Tah- Akaltara, District- Janjgir- Champa, C.G.)
3. Jai Prakash Namrata Tiwari W/o Shri Laxmikant Guruhar, Aged About 36 Years R/o Kuti Dhaar, Tahsil Pamgarh District Janjgir Champa Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Siddharth Dubey, Advocate.
For State	:	Dr. Gurudev I. Sharan, Govt. Advocate.
For Intervener	:	Mrs. Prabha Sharma on behalf of Mr. Ratnesh Kumar Agrawal, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

22/03/2021

1. This petition has been brought being aggrieved by the order dated 05.03.2018 by which the application filed by the petitioner for restoration of the Execution Case No.02-A/2012 was dismissed.

2. The petitioner and one another are the decree holders in the Civil Suit No.02-A/2012, by which relief of specific performance of contract has been granted in favour of the petitioner against defendant Late Anand Ram, who is now expired and represented by the private respondents. The Execution Case was filed and is pending, which was dismissed for non-prosecution on 12.12.2017.
3. It is submitted by the learned counsel for the petitioner, that the petitioner then filed application for restoration of the Execution Case, on ground that it was fixed in the National Lok Adalat on 09.12.2017. The mother of the petitioner suffered a fracture in her leg because of which the petitioner was engaged in taking her to the hospital and could not appear before the Court, therefore, he had sufficient reason for his non-appearance and he had received no notice of date 12.12.2017. The learned Executing Court has also made observation in the impugned order on the executability of the decree, which was totally uncalled for. As there was no such objection raised by the respondent side and no opportunity was given to the petitioner to make his submission on the point on executability of the decree. It is further submitted that vide order dated 05.01.2018, the learned Execution Court had allowed the application for restoration of the Execution Case, therefore, the impugned order that has been passed is a review of the earlier order. A sou-moto review by this Court on its own order is not permissible under Section 114 of C.P.C. and also under Order 47 Rule 1 of C.P.C. Hence, the order passed is totally erroneous.
4. Respondents are not represented.
5. Smt. Prabha Sharma on behalf of Mr. Ratnesh Kumar Agrawal, makes submission on the application filed by the intervenors. Rajkumar Tharwani and two others and she has submitted that the intervenors are

in possession of the suit property, therefore, they have a right to be heard in the Execution Case.

6. Considered on the submissions. On perusal of the order sheets dated 05.01.2018, it is found that the application for restoration of Execution Case was allowed by a speaking order and the Case was posted for the appearance of the non-applicants. On 21.02.2018. The learned counsel gave appearance for the respondents and then, the case was fixed for 05.03.2018. But on this date, the application for restoration was again considered and rejected and there is also an observation made by the Execution Court that the decree is no longer executable.
7. Neither Section 114 of C.P.C. nor Order 47 Rule 1 of C.P.C. provide for any sou-moto review of the order to be made by the Court. The impugned order is clearly a review of the order dated 05.01.2018. Further, the question of executability of the decree, if found by the Execution Court, then such question can be decided only after giving opportunity of hearing to the parties concerned. Hence, I am of this view that the impugned order is totally perverse and illegal, which is not at all sustainable. Therefore, petition is allowed and disposed off and the impugned order is quashed. The learned Executing Court is directed to proceed with the execution of the case in accordance with law. The intervenors, who have filed intervention application in this petition have opportunity to raise objection in the execution case.
8. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge