



2026:CGHC:13065

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 322 of 2026

1 - Smt. Asha Devi W/o Shri Basant Jaiswal Aged About 55 Years R/o Village-Tapkara, Tahsil- Fasarabahal, District- Jashpur (Chhattisgarh)

2 - Basant Jaiswal S/o Late Ramkunwar Jaiswal Aged About 60 Years R/o Village-Tapkara, Tahsil- Fasarabahal, District- Jashpur (Chhattisgarh)

3 - Vivek @ Bittu Jaiswal S/o Basant Jaiswal Aged About 32 Years R/o Village-Tapkara, Tahsil- Fasarabahal, District- Jashpur (Chhattisgarh)

... Petitioners

versus

1 - Devprasad Jaiswal S/o Late Goverdhan Prasad Aged About 61 Years R/o Village- Tapkara, Tahsil- Fasarabahal, District- Jashpur (Chhattisgarh)

2 - Gabrela S/o Illiyas Aged About 64 Years R/o Village- Tapkara, Tahsil- Fasarabahal, District- Jashpur (Chhattisgarh)

3 - State of Chhattisgarh Through- The Collector, Jashpur, District- Jashpur (C.G.)

... Respondents

(Cause-title taken from Case Information System)

For Petitioners : Mr. Hari Agrawal, Advocate.

For State : Ms. Isha Jajodiya, Panel Lawyer.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

18-03-2026

1. The present writ petition has been filed by the petitioners who are judgment debtors against whom the execution proceeding of the judgment and decree

dated 29-06-2024 passed by the learned trial Court in Civil Suit No.19A/2015 is pending, warrant of possession has been issued vide order dated 26-02-2026 and the said order is under challenge in the present writ petition.

2. Learned counsel for the petitioners would submit that though the petitioners are suffering from the judgment and decree dated 29-06-2024 passed by the learned Civil Judge Class I, Kunkuri, District Jashpur for vacant possession of the suit land Khasra No.129/8 area 0.101 hectare/0.25 acre situated at Patwari Halka No.07, Tahsil Farsabahar, District Jashpur. Against the said judgment and decree they have filed first appeal before the learned Second Additional District Judge, Kunkuri, District Jashpur vide Civil Appeal No.09/2024 which is pending for its consideration. Along with the first appeal they also made an application under Order 41 Rule 5 of the CPC (wrongly mentioned as Order 43 Rule 5 of the CPC) for staying the effect and execution of the impugned judgment and decree which is also pending since then. He would further submit that the decree holder have taken time to file the reply of the said application before the learned first appellate Court and after repeatedly taken time they have filed reply of the application of Order 41 Rule 5 of the CPC (wrongly mentioned as Order 43 Rule 5 of the CPC) on 29-01-2026 and the case was adjourned for hearing on the said application of the appellants/judgment debtors. He would also submit that at one side the decree holders taken time to file reply of the stay application of the judgment debtors, on the other side they were prosecuting the execution proceeding before the learned trial Court of the said judgment and decree dated 29-06-2024.
3. In the execution proceeding on 26-02-2026 the judgment debtors/petitioners made an application under Order 21 Rule 26 of the CPC for staying the execution proceeding so as to enable the judgment debtors to obtain any interim order of stay from the appellate Court and till then the execution

proceeding may be stayed. However, the said application has been rejected by learned executing court and the case has been fixed for 28-03-2026 for report of the possession warrant. He would further submit that in the first appeal pending before the learned Second Additional District Judge Kunkuri, District Jashpur the date is fixed as 27-03-2026. He would further submit that on 25-02-2026 the date was fixed before the learned first appellate Court in the appeal and on the very next day he moved his application before the learned executing Court for staying the decree. However, at present the date of hearing in the first appeal is given as 27-03-2026, whereas, in the executing Court the date for report on the possession warrant is given as 28-03-2026, therefore, the execution proceeding pending before the learned executing Court may be stayed till the decision of his application under Order 41 Rule 5 of the CPC pending before the learned first appellate Court.

4. I have heard learned counsel for the petitioners and perused the material annexed with the petition.
5. Undisputedly the petitioners are suffering from a decree of vacant possession of the subject land, the said decree was passed on 29-06-2024 and the challenge made against that judgment and decree by the petitioners/judgment debtors is pending before the learned Second Additional District Judge Kunkuri, District Jashpur from 13-08-2024 in which the decree holders made their appearance on 04-12-2024 and for one or other reason and also for appearance of other parties the hearing of the appeal was adjourned from time to time. It transpires from the order sheets annexed with the writ petition (Annexure – P/4) that except for filing of the application along with the appeal, the petitioners have not made efforts to get their application decided or raised any objection in adjournment of the proceeding. On 17-12-2025 the counsel appearing for the appellants draw attention of the Court about pendency of the application filed under Order 41 Rule 5 of the CPC

before the learned first appellate Court and then the decree holders sought time to file reply and ultimately the reply has been filed on 29-01-2026. Thereafter, the case was fixed for 25-02-2026 and ultimately for 27-03-2026. The first appeal filed by the judgment debtor is pending since 13-08-2024 for its consideration on merits as well as consideration on the application under Order 41 Rule 5 of the CPC and the execution proceeding is also pending before the learned trial Court which is prosecuting by the decree holders, in which also the judgment debtors had made their appearance.

6. Be that as it may, since the first appeal is already pending for its consideration, the judgment debtors have not shown their bonafidy to get their application decided since from 13-08-2024 in the first appeal pending before the learned Second Additional District Judge, Kunkuri, District Jashpur and it is only when in the execution proceeding the possession warrant was issued, the petitioners started pressing their application for staying the execution proceedings. Considering pendency of the first appeal by the judgment debtors before the learned first appellate Court, this court is not inclined to interfere with the impugned order dated 26-02-2026 passed by the learned executing Court.
7. Accordingly, the writ petition is dismissed.

Sd/-
(Ravindra Kumar Agrawal)
Judge