

(2014) 07 MAN CK 0001

In the Manipur High Court

Case No : CRP(CRP Art. 227) No. 3 and 7 of 2014 and Cont. Case (C) J2 No. 1 of 2014

Phairembam Ananda singh

APPELLANT

Vs

Moirangmayum Ibohal Singh
 Pukhram Renu Devi Vs
The Moirang Primary Co-operative Marketing Society

The Moirang Primary Co-operative Marketing Society Vs
Pukhram Renu Devi

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 29, Order 21 Rule 35, 151, 47
Constitution of India, 1950 — Article 227, 235
Contempt of Courts Act, 1971 — Section 10

Citation : (2014) 07 MAN CK 0001

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : A. Jagjit Singh, Advt and N. Ibotombi, Sr. Advts, Advocate for the Appellant; N. Ibotombi, Sr. Advt. and A. Jagjit Singh, Advt, Advocate for the Respondent

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—Heard Mr. A. Jagjit, learned counsel for the petitioner in CRP(CRP Art. 227) No. 3 of 2014 and Cont. Case(C) J2 No. 2 of 2014 and for the respondent in CRP(CRP Art. 227) No. 7 of 2014 and Mr. N. Ibotombi, learned senior counsel for the respondents in CRP(CRP Art. 227) 3 of 2014 and for the petitioners in CRP(CRP Art. 227) No. 7 of 2014.

2. These petitions have been tagged and heard together as the issues involved in these petitions are inter-connected, arising out of the proceedings in Execution Case No. 2/2006/1/2013 (Ref: Original Suit No. 14/1999/7/2002) pending before the Court of Addl. District Judge (FTC), Manipur West and Civil Judge (Sr. Divn.) Bishnupur.

CRP(CRP ART. 227) NO. 3 OF 2014

3. CRP (CRP Art. 227) No. 3 of 2014 has been filed by the Moirang Primary Co-operative Marketing Society, which is the decree holder against the judgment debtors in the pending Execution Case No. 2/2006/1/2013, challenging the order dated 26.12.2013 passed by the Executing Court.

3.1. The Moirang Primary Co-operative Marketing Society, as the plaintiff, obtained a decree in O.S. No. 14/1999/7/2002 on 31.12.2004 in the Court of learned Addl. District Judge (FTC), Manipur against the present respondents of the ownership of the suit-land and building/structure standing thereon and possession of the same by evicting the defendants/respondents.

3.2. After passing of the decree, the respondents filed an application belatedly after a delay of about 270 days for setting aside the decree, which was dismissed by the Court vide order dated 29.3.2006.

3.3. The respondents instead of preferring an appeal against the said dismissal order or the decree, instituted a new suit being Original Suit No. 18 of 2006 before the Court of Civil Judge (Senior Division), Manipur West against the petitioner/Society alleging that the judgment and decree dated 31.12.2004 passed in Original Suit No. 14/1999/7/2002 was illegal and the same was obtained by practicing fraud and mis-representation. A misc. case was also filed being Judl. Misc. Case No. 79 of 2007 seeking an ad-interim injunction order for restraining execution/operation of the said judgment and decree dated 31.12.2004.

3.4. In the meantime, the Execution Case No. 2 of 2006 for executing the judgment and decree dated 31.12.2004 was taken up. The Executing Court vide order dated 20.2.2007 rejected the objection raised by the respondents/judgment-debtors for stay of the execution proceeding. The appeal preferred before Gauhati High Court, Imphal Bench in MFA No. 1 of 2007 against the said order dated 20.2.2007 was dismissed by the High Court on 10.9.2007 with a direction to the respondents to pursue the pending injunction application before the Court of Civil Judge (Senior Division), Manipur West.

3.5. However, the said Judicial Misc. Case No. 79 of 2007 for injunction pending before the Civil Judge (Senior Division), Manipur West was rejected by the learned Civil Judge on merit after hearing the parties vide order dated 11.11.2008. The appeal preferred by the respondents before the learned Addl. District Judge (FTC), Manipur West, was also dismissed on 14.3.2013 on default of appearance of the appellants.

3.6. Thereafter, the petitioner/Society filed an application being Judicial Misc. Case No. 7 of 2013 before the executing Court for proceeding with the execution case. The Executing Court vide order dated 12.8.2013 issued warrant under Order 21 Rule 35 of C.P.C. to the Bailiff of the Court directing to give possession of the suit-land and shop to the petitioner/Decree-holder on or before 9.9.2013. On the basis of the warrant, the Bailiff of the Court handed over possession of the suit-land and structure to the Decree-holder after evicting the respondents

along with their belongings on 8.9.2013 at about 4.00 pm. In the report of Bailiff submitted to the Executing Court on 9.9.2013, it was mentioned that shop building and brick wall of the Judgment-debtors, namely, Smt. P. Renu & others residing at Schedule-A and Schedule-A(i) under patta 51/1375 Dag No. 1160/1294 were found demolished and the Judgment-debtors as well as their men and privies were evicted on 8.9.2013 with the help of police.

However, on 9.9.2013, the respondent No. 2 filed an application u/s 151, C.P.C. praying for extending time for eviction at least for one month, which was objected to by contending that such an application has already become infructuous as delivery of possession had been already given to the decree-holder. The judgment-debtors filed other applications including the one filed on 3.10.2013 under Order 21 Rule 29 of C.P.C. read with Sections 47 and 151, CPC which was registered as Judicial Misc. Case No. 25 of 2013, seeking stay of the executing proceedings.

3.7. The Executing Court closed the Execution Case by passing a terse order on 4.10.2013 as follows:-

5. Heard Ld. Counsel for the Decree holder. It cannot be disputed that the decree now under execution shall bind the judgment debtors/their privies, unless set aside, or otherwise found inexecutable under the provisions of the CPC and the Relevant Civil Court Rules & Orders. It cannot also be disputed that the judgment debtors had been the permissive possessors/occupiers of the suit-land. However, decree holder has not claimed any mesne profit from the judgment debtors.

6. Under the above facts and circumstances of the case, it is ordered that the judgment debtor No. 2 is allowed to occupy the suit-structure/suit-land subject to the following conditions:

(1) the judgment debtor No. 2 must undertake that he/she/his/her privies shall vacate the suit-land/suit-structure as and where required by the decree holder for any lawful purpose like municipal development, the judgment debtor shall make an alternative residential arrangement as soon as possible;

(2) the decree holder must give at least 1(one) month's notice to the judgment debtor to vacate the suit-land/suit-structure is otherwise required for lawful purpose like municipal development;

(3) the judgment debtor No. 2 must deposit a sum of Rs. 30,000/- (Rupees thirty thousand) only in favour of the decree holder at its office and must pay a monthly rent of Rs. 1500/- (Rupees one thousand five-hundred) only starting from the date of the occupation of the suit-structure/suit-land.

(4) The decree holder may at its option extend the period of the judgment debtor No. 2's suit-land occupation of the suit-land/suit structure.

(5) The above 4(four) conditions shall continue till Ld. Civil Judge (Senior Division), Manipur West decides the connected Original Suit No. 18/2006.

(6) The judgment debtor No. 2 must give undertaking in favour of the decree holder incorporating the above 5(five) conditions.

The present Execution Case is accordingly disposed of. In terms of this Order, all the connected Judicial Misc. Cases also shall stand disposed of.

From the above, it is clearly evident that the learned Judge had not considered the issues adequately with proper reasons. The learned Judge also had not indicated, much less, discussed the "facts and circumstances of the case" which led him to pass such an order allowing re-occupation of suit-land to the judgment-debtors.

3.8. Being aggrieved by the aforesaid order dated 4.10.2013 allowing the judgment debtors to occupy the suit-land after delivery of possession was given to the petitioner, the petitioner preferred a revision petition before this Court, being, CRP(CRP Art. 227) No. 23 of 2013. The issue of applicability of provisions of Order XXI Rule 29 of C.P.C. and Sections 47 and 151 of the Code for stay of the further proceeding of the execution case during the pendency of another suit was raised. The revision petition was allowed by this Court vide order dated 27.11.2013 with the following direction:

.....The question as to whether this provision shall be made applicable in case where an application is pending for restoration of the suit which was dismissed for non-prosecution has also to be examined by the Executing Court.

For the reasons stated above, I set aside the impugned order dated 4.10.2013 and remit the case back to the executing Court for reconsideration in accordance with law. It is further directed that status quo as on 8.9.2013 shall be restored and possession if taken away from the decree holder shall be restored to him.

3.9. The Executing Court, on the matter being remitted, passed the impugned order dated 26.12.2013 in which it was held that the execution case is to be postponed till the disposal of the Judicial Misc. Case No. 87 of 2013 before the Court of Civil Judge (Senior Division), Manipur West [which was filed for restoration of the Original Suit No. 18 of 2006.]

As regards the applicability of Order 21 Rule 29 of C.P.C., the Executing Court observed that survival or non-survival of the Original Suit filed by the Judgment-debtors depends on the result of the disposal of the said Judicial Misc. Case filed for restoration of the said Original Suit which was dismissed for non-appearance.

Further, it was observed that a civil Court in exercise of powers u/s 151 of CPC could direct postponement of the suit till disposal of the Judicial Misc. case filed for restoration of the main suit.

As regards maintenance of status quo as directed by this High Court, the Executing Court without referring to the Bailiff report but relying only on the statement made by the Bailiff in his examination before the Executing Court held that the brick wall described in Schedule-A(i) to the plaint has not been

demolished as directed in the Decree and as such, the Decree had not been fully executed on 8.9.2013 and no Court fee or demolition fee had been paid by the Decree-holder. Accordingly, the Decree-holder was directed to pay the Court fee/demolition fee for demolition of the brick wall and directed for execution of the decree. There was no discussion as to the restoration of the possession of the suit land to the Decree holder.

Being aggrieved by the aforesaid order dated 26.12.2013 passed by the Executing Court, CRP(CRP Art. 227) No. 3 of 2014 has been filed by the petitioner/Decree Holder Society challenging the same.

Contempt Case (Civil)J2 No. 1 of 2014

4. The petitioner also filed a Contempt Case (Civil)J2 No. 1 of 2014 alleging that the learned Addl. District Judge (FTC), Manipur West had committed contempt of this Court by his deliberate and willful violation of the direction and order dated 27.11.2013 passed by this Court in CRP No. 23 of 2013 as mentioned above.

CRP (CRP Art. 227) No. 7 of 2014

5. CRP (CRP Art. 227) No. 7 of 2014 has been filed by the judgment debtors [who are the respondents in CRP No. 3 of 2014] against the order passed by the Court of Civil Judge (Senior Division), Bishnupur in the Execution Case No. 2 of 2006/1 of 2013.

According to the petitioners in CRP No. 7 of 2014, [i.e. the judgment debtors] while the Execution Case No. 2 of 2006 is pending consideration before the Court of the Addl. District Judge (FTC), Manipur West, without any notice to the judgment debtors, the Bailiff of the Court directed them, i.e. the judgment debtors to vacate the suit-land and structure standing thereon on or before 10.2.2014 as per order passed by the learned Civil Judge (Senior Division), Bishnupur on 3.2.2014 in Execution Case No. 2/06/1/2013. It has been submitted that there could not be two execution proceedings before two different Courts for execution of the same decree. According to the them (judgment debtors), since the execution proceeding was pending before the Court of the Addl. District Judge (FTC), Manipur West, the Civil Judge (Senior Division), Bishnupur did not have jurisdiction to order the Bailiff for delivery of possession of the suit-land.

The Execution Case No. 2 of 2006 was put up before the learned Addl. District Judge (FTC), Manipur West on 1.2.2014, who passed the following order :-

Parties by counsel are present. Fixed on 12.02.2014 for further proceeding. Parties/their counsels are to note it.

Thus, according to these petitioners, while they were waiting for the next date which was fixed on 12.2.2014, to their utter surprise, the Bailiff of the Court came to the residence of the petitioners on 4.2.2014 at about 11.30 am and informed them to vacate the suit-land and structures standing thereon but on

enquiry, they came to know that the execution case was put up on 3.2.2014 before the Civil Judge (Senior Division), Bishnupur as per a direction of the learned Addl. District Judge (FTC), Manipur West, who passed the order without issuing any notice to the petitioners (judgment debtors) or by giving any opportunity of being heard.

ISSUES INVOLVED IN THESE PROCEEDINGS

6. The genesis of the problem lies in the order dated 4.10.2013 passed by the learned Addl. District Judge (FTC), Manipur West in Execution Case No. 2/06/1/13 after the Bailiff was sent by the Court to execute the decree. The Executing Court did not accept the report of the Bailiff dated 8.9.2013 submitted on 9.9.2013 and without discussing the rival contentions of the parties, vide order dated 4.10.2013 allowed the judgment debtor No. 2 to re-occupy the suit-land and shop structure subject to certain conditions mentioned in the said order, even though the bailiff had already evicted the judgment debtors from the suit-land on 8.9.2013. Being aggrieved by the order dated 4.10.2013, the decree holder preferred a civil revision petition, being CRP No. 23 of 2013 before this Court. This Court allowed the said CRP No. 23 of 2013 and set aside the order dated 4.10.2014 and remitted the case to the Executing Court for reconsideration of the applicability of Order XXI Rule 29 of CPC and restoring status-quo as on 8.9.2013 and also of possession of the decree holder as mentioned above.

7. It was purportedly in compliance of the direction of this Court passed in CRP No. 23 of 2013 on 27.11.2013 that the Executing Court passed the impugned order dated 26.12.2013 which has been challenged in CRP No. 3 of 2014. The Executing Court, while passing the impugned order dated 26.12.2013 framed the following three issues, as quoted from the impugned order:-

1. The question as to whether this provision (CPC Order 21 Rule 29) shall be made applicable in case where an application is pending for restoration of the suit which was dismissed for non prosecution has also to be examined by the executing Court.

2. Remittance back of the case to the Executing Court for consideration in accordance with law.

3. Direction that status quo as on 8.9.2013 shall be restored and possession (of the suit-land) if taken away from the decree holder shall be resorted to him.

8. As regards the first and second issues, the Executing Court on examination of the records of the O.S. No. 18 of 2006 pending before the Civil Judge (Senior Division), Manipur West observed that O.S. No. 18 of 2006 was dismissed on default on 12.9.2013 and Judicial Misc. Case No. 87 of 2013 was filed on 26.9.2013 for setting aside the said dismissal order and the next date was fixed on 3.1.2014 for appearance of the defendants. The Executing Court observed that survival or non-survival of the said original suit depends on the result of the

said Judicial Misc. Case. It was also observed that apart from this, section 151 CPC empowers a civil Court to exercise inherent power *ex debito justitiae* even in the absence of the express provisions in the CPC for the ends of justice or for the prevention of the abuse of the process of the Court. The Executing Court, by invoking the principle of equity, by referring to the judgments of the Hon'ble Supreme Court in *P. Purushottam Reddy and Another Vs. Pratap Steels Ltd.*, ; *State of Maharashtra Vs. Maharau Srawan Hatkar*, and *Modi Entertainment Network and Another Vs. W.S.G. Cricket PTE. Ltd.*, observed that it would be in the interest of justice that further order/final order in respect of the Execution case deserves to be postponed till the disposal of the Judicial Misc. Case No. 87 of 2013 pending before the Court of Civil Judge (Senior Division), Manipur West for restoration of O.S. No. 18 of 2006.

9. Coming to the third issue of maintenance of status quo and restoration of possession, the Executing Court observed that the decree required eviction of the judgment debtors/their privies "after demolishing brick wall described in Schedule A(i) of the plaint below". According to the Executing Court, the existence of such a structure is shown by the photo documents filed by the judgment debtors in Judicial Misc. Case No. 22 of 2013. The Executing Court also referred to the deposition of the Bailiff before the Court. During the cross-examination, the Bailiff had stated that "I did not do any demolition work at the suit structure/wall". On the basis of the aforesaid Bailiff's statement, the Executing Court drew the inference and conclusion that the Decree in question had not been properly and fully executed on 8.9.2013 and the Decree was yet to be executed in accordance with its terms and according to law, and the Court fee/demolition fee required by law/rule had not been paid by the plaintiff/decreed holder. Accordingly, the Executing Court directed the decree holder to pay the Court fee/demolition fee as per law/rule for the demolition of the brick-wall described in Schedule-A(i) to the Decree now under execution. Thereafter, the Executing Court directed as follows :

.....The decree shall accordingly be executed and possession of the suit-land shall accordingly be handed over to the Decree-holder and the Hon'ble High Court's direction that "status quo as on 8.9.2013 shall be restored and possession if taken away from the decree holder shall be restored to him" shall accordingly be fully complied with and executed. Steps be taken accordingly on or before 10.1.2014. Return the requisitioned records to the Civil Judge (Senior Division), Manipur West forthwith.

10. Now, we have to examine whether the order dated 26.12.2013 passed by the Addl. District Judge (FTC), Manipur West in Execution Case No. 2 of 2006, which has been assailed in CRP No. 3 of 2014 and which has been alleged to be passed in violation of this Court order for which Contempt Case (C) No. 1 of 2014 has been filed, has been passed correctly or not.

11. As we proceed, we have to examine whether the Executing Court properly considered the applicability of Order 21 Rule 29 of CPC in the present execution

case. In this regard, it may be apposite to reproduce the provisions of Order 21 Rule 29, CPC, as follows:

29. Stay of execution pending suit between decree holder and judgment debtor.-- Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

Provided that if the decree is one for payment of money, the Court, shall, if it grants stay without requiring security, record its reasons for so doing.

Reading the said provision makes it clear that the aforesaid provision will be applicable only when a suit is "pending" in any Court against the holder of a decree of such Court. The provision begins with "Where a suit is pending in any Court against the holder of a Decree....." Therefore, unless there is a suit "pending", the provision of Order 21 Rule 29 CPC cannot be invoked. It is, therefore, to be considered in the present case whether there was any suit pending in any Court against the Decree-holder. It is the case of the Judgment-debtors that they had filed a suit against the Decree-holder being O.S. No. 18 of 2006 claiming the following reliefs:-

a) a decree declaring that the said judgment and decree dated 31.12.2004 of the Addl. District Judge (FTC), Manipur West passed in Original Suit No. 14/99/7/2002 is illegal and the same was obtained by practicing fraud and misrepresentation and set aside the same.

b) any other relief or reliefs as the court may deems fit and proper in the facts and circumstances of the case.

12. This Court requisitioned the records relating to the aforesaid Original Suit No. 18 of 2006 and examined the same. From the records, it is seen that the application filed by the Judgment-debtors, i.e., Judicial Misc. Case No. 79 of 2007 in that subsequent Original Suit for stay/injunction of the decree dated 31.12.2004 was rejected by the Trial Court on merit vide order dated 11.11.2008 and the appeal against the said rejection order filed before District Judge, Manipur West was also dismissed on default because of non-appearance on 14.3.2013. The Judgment-debtors did not pursue the matter thereafter. In other words, the plea of Judgment-debtors for staying the judgment and decree dated 31.12.2004 stood rejected on merit by the competent Court. Therefore, even if the Judicial Misc. Case filed by the Judgment-debtors for restoration of the aforesaid Original Suit No. 18/2006 is allowed by restoring the O.S. No. 18 of 2006, there could not have been any order for staying the Judgment-decree dated 31.12.2004. If the Trial Court where the Original Suit No. 18/06 was pending had refused to grant the prayer of the Judgment-debtors for injunction and for staying the decree dated 31.12.2004 on merit, this Court is not able to understand on what basis and on what material, the Executing Court could grant

the stay for execution of the Judgment and decree dated 31.12.2004. It would have been a different matter if the Trial Court considering the Original Suit 18/2006 had not yet decided the issue of staying the Judgment and decree dated 31.12.2004. This Court is of the view that the observation of the Executing Court in the impugned order dated 26.12.2013 that survival or non-survival of the said Original Suit NO. 18/06 depends on the result of the disposal of the Judicial Misc. Case No. 87/2013 filed for restoration of the said suit does not provide any basis for stay of the execution proceedings. Application of the provisions of Order 21 Rule 29 of CPC had been discussed by various Courts including the Supreme Court. It has been held that this provision has to be sparingly used and in exceptional circumstance, as it would deprive enjoyment of fruits of a long drawn litigation by the Decree-holder, as has been held by the Hon"ble Supreme Court in Sri Krishna Singh Vs. Mathura Ahir and Others,

16) We are rather amazed to find that the totally unwarranted plea taken by Sri Krishna Singh seems to have found favour with the Civil Judge who readily accepted the prayer of Sri Krishna Singh of staying the execution of the decree without realising the scope and ambit of Order 21, Rule 29. Under this provision, jurisdiction has to be exercised with very great care and only under special cases. The Civil Judge also prima facie held that Harshankaranand was not a legal representative of late Mahant when this question was only left open and had to be decided by the Civil Judge. This shows the casual and perfunctory approach which was made by the Civil Judge. It is rather unfortunate that even the District Judge in revision affirmed the Order of the Civil Judge.(Emphasis added)

In this regard, the learned counsel for the petitioner, Shri A. Jagjit Singh in CRP No. 3 of 2014, has drawn attention of this Court to the decisions of Gauhati High Court and Karnataka High Court on the issue.

The Gauhati High Court in Quazi Talifiquir Rahman Vs. Sital Prasad Das and Others, observed that the question of issuing order to a party restraining him from proceeding in a regularly constituted Court of law deserves great care and consideration and such an order is not to be made unless absolutely essential for the ends of justice.

Similarly, the Karnataka High Court in Smt. Sundra Bai and Others Vs. Smt. Sonubai, held that the power under this rule has to be exercised only in exceptional cases where interest of justice requires it and fundamental consideration should be that the Decree-holder is not to be deprived of the fruits of the decree except for good reasons.

It may be also noted that the Orissa High Court in Judhistir Jena Vs. Surendra Mohanty and Another, also held that the fundamental consideration is that a decree has been obtained by a party and he should not be deprived of the fruits of the decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to

set aside the decree might succeed. It was also observed that such suits are of very precarious nature and allegations therein ordinarily would be that the previous decree was obtained by fraud or in collusion with the decree-holder and was not binding on the plaintiff. Most of these cases are likely to fail as the onus is heavy on the plaintiff to establish such fraud and similar charges. It was then observed that in such fact position, a person should not be deprived of the fruits of his decree merely because suits of frivolous character are instituted and litigations are out and such decree must be allowed to be executed unless an extraordinary case is made out and no stay should be granted. It was also observed that even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled. It was also observed that no hard and fast rule can be laid down in case whether stay can be granted or refused but a rigorous test has to be applied and in most of the cases, prayer for stay is bound to be refused. Similarly, in *Youth Club, Bolangir vs. Premlata Kumari Devi*, AIR 2005 Orissa 190, it was also observed that the fundamental consideration is that when the decree has been passed by a Court in favour of a party, unless there are extraordinary circumstances and except for good reasons, he should not be deprived of enjoying the fruits of the decree as it is well settled that a decree remains in force unless it is set aside and it should not be lightly dealt with on the basis of surmises and conjectures that in the suit filed subsequently, the same may be set aside.

The cumulative effect of these decisions with which this Court respectfully agrees, would lead to the irresistible conclusion that a party has to establish a substantial case and existence of compelling circumstances for obtaining a stay of the execution, as a decree obtained could not be lightly ignored.

13. On examination of the records of O.S. No. 18 of 2006, it is seen that what had been averred in the plaint is that the patta of the suit land was illegally prepared by an order of the Sub-Divisional Officer, Moirang in violation of the provisions of MLR & LR Act without any valid government allotment order. The said order of the SDO was challenged before the Revenue Tribunal which set it aside and directed cancellation of the Jamabandi. The Judgment-debtor further contended that during the pendency of the Revenue case, the Decree-holder instituted the O.S. No. 14 of 1999. Thus, apart from the allegation that the Jamabandi/land records had been illegally prepared by the SDO without any allotment order by the State Govt., there is no other allegation to show fraudulent practice. It is to be observed that if fraud is alleged, the SDO, Moirang who had allegedly prepared the land records in favour of the Decree-holder ought to have been impleaded in the suit as a defendant by providing material particulars to show how the fraud was perpetrated. However, no such particulars are pleaded in the plaint filed by the Judgment-debtor. In any event, the Trial Court rejected the plea of the Judgment-debtor for passing an injunction to stay the Judgment and decree dated 31.12.2004 vide order dated 11.11.2008 passed in Judicial Misc. Case No. 79 of 2007 after considering the merit of the case. The Trial Court in that Judicial Misc. Case observed that even though the Judgment-

debtor had entered her name in the Dag Chitha of the suit-land, it was set aside by the Revenue Tribunal vide order dated 18.12.1996 passed in Revenue Revision Case No. 18 of 1996. As the claim of the Judgment-debtor was itself found doubtful and could not establish the prima facie title over the suit land, her prayer for staying the judgment and decree dated 31.12.2004 was rejected by the Trial Court. This Court is of the view that no such exceptional ground has been made out by the judgment-debtors warranting stay of the decree dated 31.12.2004, which had been stayed so casually by the Executing Court. When pointed out to Mr. N. Ibotombi, learned senior counsel for the judgment-debtors about this factual and legal position, he very fairly submitted that this Court may pass appropriate orders in the facts of the case.

It has to be noted that the aforesaid Original Suit No. 18/06 was not "pending" when the earlier order dated 4.10.2013 as well as impugned order dated 26.12.2013 were passed by the Executing Court as the suit had stood dismissed for default on 12.9.2014. What was pending was only a Miscellaneous Case for restoration of the said Original Suit No. 18/06. This Court is of the view that mere pendency of a miscellaneous application for restoration of a suit would not endow the proceeding the attribute of a "pending suit." A "pending suit" would only mean a suit which is under active consideration of a Court for decision on the issue raised and which had not been dismissed for any reason. Since there was no live lis between the Judgment-debtors and Decree-holder as regards the title of the suit-land, this Court is of the view that provision of Order 21 Rule 29 CPC cannot be invoked. The pending application was not related to the live issue regarding the title of the suit-land, but relates to the issue whether a suit which was dismissed earlier could be restored or not. The live issue was of restoration of a dismissed suit, not of the title of the suit land. In other words, what was pending case was regarding restoration of a dismissed suit and not a suit relating to the title of the suit-land.

14. Mr. N. Ibotombi, learned senior counsel for the respondents, however, makes a feeble attempt to justify the stay of the execution proceeding by the Executing Court by stating that the stay was not granted on the basis of the provisions of Order 21 Rule 29 of CPC but was granted by invoking the inherent powers of the Court u/s 151 read with section 47 of the CPC.

It is now well settled that the scope of Section 47 of CPC is very limited. The Executing Court can allow petition u/s. 47 of CPC regarding the executability of the decree if it is found that the same is void ab initio, null and void, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such provisions of law or the law was promulgated making the decree inexecutable after its passing. (See Dhurandhar Prasad Singh Vs. Jai Prakash University and Others, .

In the present case, no such materials have been brought to the notice of this Court which would warrant invoking Section 47 of CPC. It is to be noted that the Executing Court neither considered any material whatsoever for invoking this

power except for assigning the reason and stating that another suit being O.S. No. 18 of 2006 was pending before the Court.

As regards the applicability of Section 151 of CPC, the inherent power of the Court, it is well settled that wherever the Code is silent regarding any procedural aspect, the inherent power of the Court can be invoked to act *ex debito justitiae* for doing real and substantive justice between the parties. A reading of Section 151 of CPC would show that this inherent power has to be invoked only "as may be necessary for the ends of justice" or "to prevent abuse of the process of the Court". In the present case, it is not the case of anybody that there was abuse of process of the Court by the decree-holder which warranted invocation of the said inherent power. The Executing Court, however, invoked the said provision "for the ends of justice". If according to the learned senior counsel, the provisions of Order 21 Rule 29 were not invoked, but Section 151 of CPC, for stay of the execution case, in that event, there must be much more compelling reasons than what is required under Order 21 Rule 29 of CPC. It is well settled that inherent power is a judicial power, which cannot be exercised as an appellate power. Therefore, the Executing Court cannot pass order as if it is sitting in appeal against the order of the trial Court in Judl. Misc. Case No. 79 of 2006 (Ref:-O.S. No. 18 of 2006) for stay of the decree. The only ground for invoking this power is to do real and substantial justice i.e. by preventing injustice to one of the parties. In the present case, execution of the decree against the judgment-debtors is by operation of law and if the judgment-debtors have to be evicted from the suit-land, it is because of the terms of the decree and not because of any other reason. Therefore, unless the decree itself is found to be defective or questionable or likely to be set aside in the pending O.S. No. 18 of 2006, the effect of the decree could not be nullified by staying the execution proceeding. In other words, a very strong case must be made out to show that the operation of the decree would cause undue hardship to the judgment-debtors so as to invoke this inherent power, which this Court finds to be wanting. In fact, this Court, on consideration of the materials on record, does not find any material warranting invocation of Section 151 of CPC. There is nothing on record suggesting causing any "injustice" by executing the decree, which needs to be prevented.

15. This Court is also not able to understand the approach of the Executing Court inasmuch as the Executing Court seems to be more concerned about the rights of the Judgment-debtors than that of the Decree-holder. How this principle of "equity" could be applicable in the present facts and circumstance is not comprehensible at all to this Court. The Judgment-debtors had evidently failed in their attempt to block the execution of the decree dated 31.12.2004 after the Judicial Misc. Case No. 79/2007 (arising out of the O.S. No. 18 of 2006) filed by the judgment-debtors was dismissed by the Court of Civil Judge (Sr. Divn.), Manipur West on merit on 11.11.2008. The records requisitioned by this Court clearly show that the Civil Judge had considered three cardinal principles of *prima facie* case, balance of convenience and irreparable loss and thereafter, rejected the plea of the Judgment-debtors for passing a temporary injunction

restraining the execution of the decree dated 31.12.2004 passed in Original Suit 14/1999/7/2002. The records also show that the appeal preferred by the Judgment-debtors before District Judge against the refusal to pass injunction order, was dismissed on default of appearance by the Judgment-debtors and Judgment-debtors did not pursue the matter thereafter. It may be also mentioned that prior to that the Executing Court had also dismissed the objection of the Judgment-debtors for stay of the execution proceeding on 20.2.2007 and appeal preferred against it before the Gauhati High Court was dismissed by the High Court on 10.9.2007. Therefore, unless there are compelling circumstances, which this Court finds none in the present case, as evident from the records, the Executing Court was clearly in error in invoking the provisions of Section 151 CPC for staying the execution. The Executing Court had stayed the execution proceeding on mere asking of the Judgment-debtors. No reason has been assigned and no material facts and compelling circumstances have been adverted to and discussed in the impugned order which warranted the Executing Court to invoke the inherent provision of Section 151 of the Code to stay the proceeding of Execution Case, except for making the observation that a Judicial Misc. Case for restoration of Original Suit is pending and survival and non-survival of the Original Suit depends on the result of the disposal of the said Judicial Misc. Case. This Court holds that there is no material on the basis of which the Execution Case. 2/2006/1/2013 can be stayed by the Executing Court. Under the circumstances, this Court has no hesitation in coming to the conclusion that the Executing Court, rather than advancing the cause of the justice by continuing the Execution Case for executing a decree which has not been judicially interfered, stalled the same on a frivolous ground. Stalling execution of a validly obtained decree, not interfered by any higher Court, by showing erudition on the principle of equity and maxim of "ex debito justitiae" by the Executing Court is totally misplaced and is disapproved by this Court.

16. It may be also stated that even if the Judgment-debtor comes out successful in the O.S. No. 18 of 2006 and the decree dated 31.12.2004 is set aside, he can take appropriate proceeding and apply for restoration as has been held by the Hon"ble Supreme Court in Usha Sinha Vs. Dina Ram and Others, .

It may be apposite to remind the Executing Courts of the need to avoid any unreasonable delay in execution of a decree because if the Decree-holder is unable to enjoy the fruits of his success by getting the decree executed, the entire effort of a successful litigant would be in vain as observed by the Hon"ble Supreme Court as recently as Satyawati Vs. Rajinder Singh and Another, in which the Hon"ble Supreme Court observed that,

12. It is really agonizing to learn that the appellant-decree holder is unable to enjoy the fruits of her success even today i.e. in 2013 though the appellant-plaintiff had finally succeeded in January, 1996. As stated hereinabove, the Privy Council in the case of The General Manager of the Raj Durbhunga under the Court of Wards v. Maharajah Coomar Ramaput Singh (1871-72) 14 MIA: 20 ER

912 had observed that the difficulties of a litigant in India begin when he has obtained a Decree. Even in 1925, while quoting the aforesaid judgment of the Privy Council in the case of AIR 1925 448 (Oudh) the Court was constrained to observe that "Courts in India have to be careful to see that process of the Court and law of procedure are not abused by the judgment-debtors in such a way as to make Courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights.

13. In spite of the aforesaid observation made in 1925, this Court was again constrained to observe in Babu Lal Vs. Hazari Lal Kishori Lal and Others, in para 29 that

Procedure is meant to advance the cause of justice and not to retard it. The difficulty of the decree holder starts in getting possession in pursuance of the decree obtained by him. The judgment debtor tries to thwart the execution by all possible objections.

The reliance by the learned counsel for the decree-holder/Petitioner on the aforesaid judgment in Satyawati (supra) that the petitioner had been unnecessarily deprived of the fruits of the decree does not seem to be unreasonable.

17. This leads to the next issue as to whether the execution had been duly carried out by the Bailiff and delivery of possession of the suit-land and shop standing thereon had been handed over to the Decree-holder. Surprisingly, the Executing Court while passing the impugned order dated 26.12.2013 did not refer at all to the Bailiff report which clearly stated that the Judgment-debtors and their men had been evicted on 8.9.2013 and possession thereof had been delivered to the decree-holder. The Executing Court also completely ignored the Bailiff report which stated that the brick wall described in Schedule A(i) in the plaint had been already found to be demolished. The Executing Court, however, by referring to the statement of the Bailiff made before the Court in which he had stated that he did not do any demolition work, concluded that the Decree had not been fully executed by demolishing the brick wall and also that no Court fee had been paid by the Decree-holder. The finding of the Executing Court, to say the least, is perverse. This Court is not able to understand how the Bailiff report submitted by the Bailiff, which should form the most important basis for proceeding with Execution Case was totally ignored by the Executing Court.

The wall had been already demolished before the Bailiff came to the suit land as mentioned in his report. Therefore, if the wall had already demolished, the question of demolishing by the Bailiff at the time of execution does not arise. The Executing Court referred to an application filed by the Decree-holder in Judicial Misc. Case No. 22 of 2013 wherein certain photographs were enclosed to show the existence of brick wall. However, on perusal of the records, especially, Judicial Misc. Case 22 of 2013 where the photographs were enclosed, it is seen that Judgment-debtors had submitted 4 photographs which only show the

existence of the shop structure but not of any brick wall. There is no trace of existence of any brick wall in the said photographs. This Court has no hesitation to hold that there is no material on record to show that there was any brick wall on the suit-land which was required to be demolished. The finding of the Executing Court that the brick wall has not yet been demolished is without any basis and in fact contrary to the material evidence in the form of Bailiff report. Therefore, the direction by the Executing Court to the Decree-holder to pay the demolition fee for demolition of the brick wall is patently absurd, illegal and not sustainable.

This Court cannot but observe that when the Executing Court passed the order dated 4.10.2013 earlier allowing the judgment-debtors to re-occupy the suit-land and shop site, there was no mention nor any discussion of the existence of any brick wall or payment of Court fee/demolition fee. In fact, the Executing Court allowed the decree-holder to take the help of the police at the time of execution for helping the bailiff. Therefore, this Court feels that these observations that the brick wall had not been demolished and no Court fee/demolition fee paid, have been brought in by the Executing Court later, only to justify his illegal order dated 26.12.2013.

18. Coming to the issue of maintenance of status-quo as on 8.9.2013 and restoration of possession to the Decree-holder specifically directed by this Court in CRP No. 23 of 2013, the Executing Court has not dealt with the issue properly in the light of materials on record but ignored and skipped the issue by stating that the direction of this Court shall be fully complied and executed. The Executing Court did not follow the direction issued by this Court in CRP No. 23 of 2013 for restoration of status quo as on 8.9.2013. It was the duty of the Executing Court to follow the direction to restore status quo as was obtaining on 8.9.2013. It could not evade it by bringing in new considerations which were based on wrong premises. From the Bailiff report, it is clear that the Judgment-debtors were evicted with the help of the police and possession of the suit-land and structures were delivered to the Decree-holder. This factum had not been denied by the Judgment-debtors anywhere. In fact, the Judgment-debtors clearly mentioned in Judicial Misc. Case 21-A of 2013 filed on 10.9.2013 that the Judgment-debtors were ousted forcibly from their house and doors were locked and they had taken shelter in the house of their friends. Therefore, there was no difficulty on the part of the Executing Court to determine the position obtaining on 8.9.2013 and ensure restoration of the status-quo as on 8.9.2013 as directed by this Court by allowing the Decree-holder to take possession of the suit-land and the shop, which however, was not done by the Executing Court. The delivery of possession of the suit-land and shop had been already given to the Decree-holder by the Bailiff on 8.9.12 as clearly mentioned in his report and the Bailiff in his statement made before the Court had stated that the Judgment-debtors had themselves had removed the articles and goods and they had taken away the same. Thus, there are ample materials on record to show that Judgment-debtors vacated the same and the possession was delivered to the Decree-holder.

Accordingly, the Executing Court ought to have directed restoration of status-quo as directed by this Court on 27.11.2013 in CRP No. 23 of 2013 by delivering possession of the suit-land to the Decree-holder but the same was not done by the Executing Court. Therefore, this Court has no hesitation to hold that Executing Court did not follow the direction issued by this Court for restoration of status quo as on 8.9.2013 and also for restoring possession, which was taken away from the Decree-holder.

The impugned order dated 26.12.2013 passed by the Executing Court is thus not only not in conformity with the order dated 27.11.2013 passed in CRP(CRP Art. 227) No. 23/2013 but is in total disregard and violation of the order and direction of this Court.

19. As regards the Contempt case, this Court finds that the Addl. District Judge (FTC), Manipur West has not only not complied with the direction of this Court but also violated the order passed by this Court on 27.11.13 in CRP No. 23 of 2013. However, the issue is whether such violation or non-compliance would attract the provisions of the Contempt of Courts Act, 1972? Therefore, we have to examine the nature of violation or non-compliance in the context of the factual background which has been already discussed hereinabove.

20. Normally, this Court would not invoke contempt proceedings against any judge for alleged non-compliance or violation of a direction of this Court for there are judicial recourses available to any aggrieved party for rectification of any judicial error.

Our legal system has put into place various statutory provisions like appeal, review, revision, etc. to deal with bonafide judicial errors committed by Courts. The judicial hierarchy has been evolved to rectify such errors which are bound to occur while dispensing justice.

It has to be borne in mind also that in the name of assailing the correctness of an order passed by a Court, if any allegation is made scandalizing the Court and undermining the majesty of law, it must not be countenanced, as any such criticism would undermine the independence of judiciary. Under our constitutional scheme, the primary task of the judiciary is not only to settle disputes and act as an arbiter but also to uphold rule of law. In discharging these onerous responsibilities, retaining the faith, trust and confidence of the people by the judicial institution is of the utmost importance, without which the judiciary cannot effectively discharge these roles. It is to be remembered that it is at the level of the subordinate Courts that most of the litigants and public at large come into direct contact with the judicial system. Therefore, the subordinate Courts have a heavy responsibility while discharging their duties that they act in a manner that the confidence of the people is not shaken in any manner and any such deviant act on the part of any subordinate Court must be immediately scuttled and such tendencies must be nipped in the bud. The High Court is placed in a unique position in the Indian judicial structure. Under Article 235 of

the Constitution of India, the High Court has been entrusted with the responsibility of control over district Courts and Courts sub-ordinate to them and with it also comes the responsibility to ensure protection from unwarranted criticism of the subordinate Courts. There have been many instances where the High Courts have taken up contempt proceedings against persons for making vile allegations against subordinate Judges. Section 10 of the Contempt of Courts Act empowers the High Court to exercise jurisdiction and authority in respect of contempt of Courts subordinate to it. This is to insulate the subordinate judges from unfair criticism against them for orders/judgments passed by them bona fide in discharge of their judicial works. If anybody is aggrieved by any judicial order that may be passed by the subordinate Judges, there are judicial remedies available to him in the form of appeal, revision, review, etc. but cannot criticize the Court. Normally, Courts would not countenance accusations made against a subordinate Judge of unfairness, prejudice and impropriety as any such accusation without basis amounts to contempt and undermines the institution.

20.1. What, however, has queered the pitch in the present case and caused serious concern to this Court is the affidavit filed by the concerned Judge, who while trying to justify the order passed by him pursuant to a direction of this Court, has made certain statement in his affidavit which is incorrect and contrary to records.

The directions of this Court to the Addl. District Judge (FTC) Manipur West, as contained in the order dated 27.11.2013 in CRP No. 23 of 2013, were to

- i) Reconsider the applicability of Order 21 Rule 29, CPC in the present case.
- ii) To restore status-quo as on 8.9.2013.
- iii) To restore possession of the suit-land/structure if taken away from the decree-holder.

As regards direction No. i), the issue is essentially a question of law, which has been already dealt with by this Court in the preceding paragraphs. There would be hardly any scope for attracting provisions of Contempt of Courts Act for wrong interpretation of law. Hence, this Court would skip the first direction and consider the later two directions issued by the High Court as regards the allegation of contempt of Court.

In order to comply with directions No. ii) and iii), the Executing Court had to decide as to what was the position/situation obtaining on 8.9.2013.

It is to be remembered that it was on 8.9.2013 that the Bailiff as per direction of the Executing Court (the Addl. District Judge (FTC) Manipur West) went to execute the decree. It is on record that the Bailiff went to the suit-land for execution and executed the decree by evicting the Judgment-debtors and submitted his report to the Executing Court. Therefore, the report submitted by the Bailiff will form the most vital evidence/material to consider these issues.

The Bailiff report was exhibited as C/1 when the statement of the Bailiff was recorded by the learned Judge himself in the Court on 18.9.2013. In the Bailiff report, demolition of the brick wall is clearly mentioned. The English translation of the bailiff report [furnished by the petitioner in Cont. Case(C) J2 No. 1 of 2014] is reproduced hereinbelow:-

In pursuance of the order passed in Execution case No. 2 of 2006 by the Addl. District Judge (FTC) Manipur West, the shop building and brick wall of the judgment-debtor namely Smt. Pukhram Renu Devi and others of Moirang Bazar, P.O. & P.S. Moirang, residing at Schedule-"A" and "Ai" of Patta No. 51/1375, Dag No. 1160/1294 was found demolished. The judgment-debtor as well as his men and their properties were evicted from the said land on 08.09.2013 with the help of police.

Therefore, the said land was given in possession to the Decree-Holder namely Shri Phairembam Ananda Singh (Director the Moirang Primary Co-operative Marketing Society) Moirang Bazar. The Decree-Holder put his signature to acknowledge the possession in front of witnesses. A copy of the possession is also paste on the shop building.

(Emphasis added)

Illegible

8.9.2013

Bailiff

Decree-holder:

Sd/-

Phairembam Ananda Singh

8.9.2013

However, the said report, which clearly mentions that the brick wall was found demolished, has been completely ignored by the Executing Court in the impugned order passed by the learned Judge, as if such a report never existed or was never produced before the Executing Court or never brought to its notice.

[20.2] What is distressing and which this Court finds totally unacceptable is the plea taken by the learned Judge in para No. 4 of his affidavit-in-opposition filed in Contempt Case that neither the plaintiff/Decree-holder nor the Bailiff had placed before the Executing Court the fact of non-existence of the brick wall. The learned Judge in his affidavit-in-opposition deposed that had this fact been placed by the plaintiff/Decree-holder or the Bailiff before the Executing Court, the learned Judge might not have ordered the Plaintiff/Decree-holder to pay demolition fee/Court fee. In para No. 4 of his affidavit-in-opposition, he stated as follows,

4. That, the contents of the paras 13 to 14(b) are totally denied. The decree dated 31.12.2004 Annexure-A/1 directs and mandates: ".....it is ordered and decreed that the plaintiff/Society be put in possession of the suit-land described in Schedule of the plaint below by evicting the defendants, their men, agents and privies, if any, after demolishing brick wall described in Schedule A(1) of the plaint below" (at page 27 of the Contempt Petition). But the bailiff in his cross-examination had deposed: "..... I did not do any demolition work/demolition of the suit-structure/wall" as recorded by the respondent in his order dated 26.12.2013 Annexure-A/4 (at page 50 of the Contempt Petition). Neither plaintiff/decreed-holder nor the bailiff had placed before the Executing Court the non-existence of the brick-wall although the Decree had ordered the demolition thereof. The alleged fact has been brought only to the notice of the Hon"ble High Court, as is shown in para 14(b) of the Contempt Petition at page 7 of the same. Had that fact been placed by the Plaintiff/Decree-holder before the Executing Court, the respondent might not have ordered the Plaintiff/Decree-holder to pay the demolition fee/court fee.

(emphasis added)

It may be noticed that the above statement is quite contrary to what the learned Judge had mentioned at para No. 2.2 of his order dated 26.12.2013, which is impugned in the present CRP No. 3 of 2014, where the learned Judge specifically mentioned that examination of the records of the present Execution Case shows that 8.9.2013 was the date on which the Bailiff had submitted that on the order of this Court he executed the Decree, and the Court had examined him on oath. The aforesaid para No. 2.2 in the impugned order dated 26.12.2013 is reproduced herebelow:-

2.2 Hon"ble High Court's direction to the effect that "Status quo as on 8.9.2013 shall be restored and possession (of the suit-land) if taken away from the decree-holder shall be restored to him" has also to be complied with without fail. Examination of the records of the present Execution Case shows that 8.9.2013 was/is the date on which the Bailiff has submitted that on the order of this Court he executed the Decree. He has also submitted his Report and for the confirmation and acceptance of his Report this Court has also examined him on oath.

(emphasis added)

In the impugned order, while the learned Judge reproduced verbatim of the statement made by the Bailiff in the Court to hold that the brick wall was not demolished, he never referred to the contents of the report submitted by the Bailiff which clearly showed that the brick wall had been demolished. Had the Executing Court referred to the Bailiff report which was already examined by him, it would have been clearly evident that the brick wall had been already demolished and as such, there would not have been no occasion for holding by the Executing Court that the brick wall had not been demolished, by merely

inferring from the statement of the Bailiff in the cross-examination that "I did not do any demolition work/demolition of the suit structure/wall."

It is inconceivable that the Judge of the Executing Court would not have known, as claimed by him in his affidavit-in-opposition, that the fact that the brick wall had already been demolished was not brought to his knowledge. The Judge himself had examined the Bailiff on 18.9.2013 and the said report was exhibited as Exhibit C-1 under his signature as mentioned above. He also clearly mentions in Para No. 2.2 of the impugned judgment that records of the execution case were examined by him and yet he stated that he did not notice the bailiff's report which stated that the brick wall had been demolished. In the same impugned judgment, the learned Judge gives the contradictory finding that the wall is not yet demolished in the face of the Bailiff's report. The learned Judge also relied on certain photo documents filed by the judgment-debtors. On examining the said photo documents, no such photograph of any brick wall is available.

20.3. This Court observes that the learned Addl. District Judge (FTC), rather than espousing the cause of justice, has been instrumental in stalling the flow of justice by not taking cognizance of the vital material evidences on record, which clearly are in favour of the petitioner/Decree Holder.

It may be observed that non-consideration of any material evidence or relevant material by a tribunal or Court, in itself may not constitute any judicial impropriety. If the learned Judge had taken the stand that such a vital material had escaped his notice, the matter would have rested there and there would have been no necessity to proceed further except for setting aside the impugned order and directing reconsideration. In the present case, however, it is not merely the act of ignoring the Bailiff's report, but apportioning the blame to the Bailiff or the decree-holder for their alleged failure to bring to the notice of the Court as mentioned in para No. 4 of his affidavit-in-opposition which is incorrect as discussed above. It is not correct to say that neither the Bailiff or the decree-holder did not bring to the notice of the Court of the demolition of the wall as mentioned in his affidavit-in-opposition.

Thus, considering the facts and circumstances as discussed above, the error committed by the Executing Court does not seem to be a bonafide judicial error. The Executing Court has shown scant regard to the superior Court in failing to comply with the direction issued and glossed over such directions with ingenuous interpretation of law by misrepresenting facts and demonstrating misplaced sympathy by invoking the lofty principle of equity for those who abuse the process of law.

Therefore, this Court is of the prima facie view that the action of the learned Judge warrants initiation of contempt proceeding against him, particularly in the context of the incorrect statement made by him in para No. 4 of his affidavit-in-opposition.

20.4. This Court has given anxious thought on this issue. Considering the fact that this Contempt proceeding relates to a serving judicial officer, arising out of a judicial proceeding, and that it may have a far reaching consequences for not only the concerned individual Judge but also have serious implication for the subordinate judiciary in general in discharge of their judicial duties and also considering the fact that notice had been issued by this Court on 24.01.2014 in the Contempt Case, this Court is of the opinion that before proceeding further, this contempt petition may be placed before the Hon'ble Chief Justice for his Lordship's consideration as to whether the present contempt petition is to be proceeded by this Court sitting singly or by a Division Bench of this Court.

21. As regards the CRP(CRP Art. 227) No. 7/2014 filed by the Judgment-debtors challenging the proceeding initiated by the Civil Judge (Sr. Divn.), Bishnupur, this Court is of the opinion that the Addl. District Judge (FTC), Manipur West ought not have referred the case to the Civil Judge (Sr. Divn.), Manipur West when the matter was very much pending before it and that too without informing the Judgment-debtors.

On examination of the records of the execution case which were requisitioned by this Court, this Court noticed that there was no consideration by the Executing Court i.e. the Court of Addl. District Judge (FTC), Manipur West nor any judicial order passed by him before directing the Civil Judge (Senior Division), Manipur West to execute the decree. From the records, it is seen that the learned Addl. District Judge (FTC), Manipur West wrote to the Civil Judge (Senior Division) on 30.1.2014, without informing the Judgment-debtors, requesting the Civil Judge to execute the decree and return the report on or before 12.2.2014. Since no reason has been assigned and no judicial order had been passed while directing the Civil Judge (Sr. Divn.), Manipur West to execute the decree nor the Judgment-debtors were heard before directing the Civil Judge (Sr. Divn.) to execute the decree, the said execution proceeding pending before the Civil Judge (Sr. Divn.) is illegal and the same is set aside. The learned Addl. District Judge (FTC), Manipur West adopted a procedure which is unknown in law by directing the Civil Judge (Sr. Divn.) to execute the decree without informing the Judgment-debtors. Accordingly, the CRP No. 7 of 2014 is allowed by setting aside the proceedings initiated by the Civil Judge (Sr. Divn.), Bishnupur.

However, having said so, considering the peculiar facts and circumstance of the case and the manner in which the learned Fast Track Judge had conducted himself in the execution proceeding as discussed above and that a prima facie case has been made out for initiating a contempt proceeding against him, it would be in the interest of justice that the execution case i.e. Execution Case No. 2/2006/1/2013 pending before him, the Addl. District Judge (FTC) Manipur West, be immediately transferred to the Court of the Civil Judge (Sr. Divn.), Bishnupur which shall then proceed with the execution case in terms of the direction issued in this regard.

Accordingly, let the records of the Execution Case No. 2/2006/1/2013 be

transferred immediately to the Court of the Civil Judge (Sr. Divn.), Bishnupur with intimation to the Court of Addl. District Judge (FTC) Manipur West and parties are directed to appear before the Court of the Civil Judge (Sr. Divn.), Bishnupur on 28.07.2014 for further proceeding in the execution case in terms of the directions issued by this Court.

22. For the foregoing reasons, the impugned order dated 26.12.2013 passed by the Court of Addl. District Judge (FTC), Manipur West in Execution Case No. 2/2006/01/2013 challenged in CRP No. 3/2014 is set aside and CRP No. 3 of 2013 is allowed and the matter is remitted to the Executing Court, which will now be the Court of the Civil Judge (Sr. Divn.), Bishnupur, as directed by this Court above in CRP No. 7 of 2014, with the following observations:-

i) As regards the earlier direction issued by this Court in CRP No. 23 of 2013 to consider whether the provision of Order 21 Rule 29 of CPC shall be applicable in the present case, in view of the conclusion and decision arrived at by this Court in these proceedings, no further consideration is required to be undertaken by the Executing Court. This Court is of the view that in the present case, the provision of Order 21 Rule 29 of CPC would not be applicable as no suit, as contemplated under Order 21 Rule 29, CPC was pending at the time of passing the impugned order dated 26.12.2013. Further, no case has been made out for invoking the provision of Section 47 or Section 151, CPC as discussed above and there is no scope for staying the execution case on the ground of pendency of the restoration application, Judl. Misc. Case No. 87 of 2013, before the Court of Civil Judge (Sr. Divn.), Manipur West.

ii) It is also ordered that in the meantime, even if the Judicial Misc. Case 87 of 2013 pending before the Court of Civil Judge (Sr. Divn.), Manipur West, is allowed, thus restoring the O.S. No. 18 of 2006 pending before it, for the reasons discussed above, there will not be any scope for staying the present execution proceeding by invoking the provisions of Order 21 Rule 29 of CPC. In other words, even if O.S. No. 18 of 2006 is revived, its pendency will not be a ground for staying the Execution Case No. 2/2006/1/2013.

iii) As regards maintenance of status quo as on 8.9.2013, in view of the materials available on the record, which clearly indicate delivery of possession of the suit-land and shop to the Decree-Holder by the Bailiff in terms of the Decree, and eviction of the Judgment-debtors from the suit-land and structure on 8.9.2013, the petitioners/Decree-holder shall be entitled to remain in possession of the suit-land. Since the Judgment-debtors had been allowed to re-occupy the suit-land illegally after they had already vacated, in terms of the order dated 4.10.2013 passed by the Executing Court, and as the said order 4.10.2013 had been already set aside by this Court in CRP(CRP Art. 227) No. 23/2013, and as this Court, in the present proceeding, holds that Decree-holder is entitled to remain in possession of the suit land, the Executing Court i.e., the Court of the Civil Judge (Sr. Divn.), Bishnupur is directed to take such steps in accordance with law for ensuring that the possession of the Decree-holder of the suit-land is

immediately restored to the Decree-holder by ensuring eviction of the Judgment-debtors from the suit land and proceed further in accordance with law.

23. In the result, for the reasons discussed above, the Civil Revision Petition No. 3 of 2014 is allowed by setting aside the impugned order dated 26.12.2013 passed in Execution Case No. 2/2006/1/2013. Civil Revision Petition No. 7 of 2014 is also allowed, however, with the direction that the case records of the Execution Case No. 2/2006/1/2013 be immediately transferred to the Court of Civil Judge (Sr. Divn.), Bishnupur for further proceeding of the execution case as indicated above.

24. LC records be immediately remitted to the concerned Court.

25. A copy of this judgment and order may be placed in the files of CRP(CRP Art. 227) No. 3 of 2014 and CRP(CRP Art. 227) No. 7 of 2014 which are disposed of.

26. As regards the contempt petition, i.e., Contempt Case (C)J2 No. 1 of 2014, the matter is separated and may be placed before the Hon"ble Chief Justice for consideration as discussed in preceding para No. 20.4 before proceeding further.