

ORDERS ON I.A. No. XXVI

The instant application has been filed by Judgment debtors No.1,2 and 5 under Order V Rule III R/w.Sec.151 of C.P.C to direct the decree holder to appear before this court in person in OS No.188/2011 or to direct the counsel on record for decree holder to inform the party to appear in person since the Judgment debtors filed an application to recall the order of compromise dated 11.10.2013 passed in OS No.188/2011 to reopen the case for adjudication.

2. In the memorandum of facts the counsel for Judgment debtors has stated that an application is filed in OS No. 188/2011 under Section 151 of C.P.C to reopen the compromise decree dated 11.10.2013 on the ground of fraud and non service of summons. This court has already issued notice to the decree holder herein and despite of repeated attempts the decree holders has deliberately evaded receipt of summons and failed to appear before this court. The matter is now posted for appearance of decree holder on 17.10.2025. In view of the serious allegations raised in the application and due to continuous absence of decree holder, the delay is caused in progress of the proceedings. Order 5 Rule 3 of C.P.C empowers this court to direct the party to appear in

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person, where the nature of dispute requires personal explanation for clarification. This court has inherent power under Section 151 of C.P.C. Hence, prayed to allow the application.

3. The application is opposed by the counsel for decree holder by stating that the same is not maintainable under law. It is stated that the decree holder is not in station and he is not reachable by his counsel. The counsel has not received any instruction in respect of summons or notice issued in OS No. 188/2011. The compromise recorded before Lok-Adalath carries same force and status as a civil court decree under Section 21 of Legal Services Authorities Act, 1987. The same is binding on all the parties. The application is not maintainable as the application seeking to recall the legal compromise decree is untenable. Order 5 Rule 3 of C.P.C applies only to the pending proceedings, wherein adjudication remains. It can not be invoked to compel the appearance in the matter that finally stands concluded. Section 151 of C.P.C can not be invoked to over ride the express statutory provision. The application is nothing but abuse of process of law. Hence prayed to reject the application with cost.

4. Heard both sides.

5. The following points would arise for my consideration:

1. Whether the counsel for Judgment debtors No.1, 2 and 5 has made out grounds to allow the application ?
2. What order?

6. My answer to the above points are as follows:

Point No.1 : **In the Negative**

Point No.2 : **As per final Order
for the following**

REASONS

7. Point No.1: This is an execution petition filed for execution of compromise decree passed in OS NO.188/2011 dated 11.10.2013. The present application is filed to direct the decree holder to appear in person in OS No.188/2011 or to direct the counsel to keep him present as an application is filed to reopen the compromise decree dated 11.10.2013. It is to be noted here that the application is accompanied with the memorandum of facts in OS No.188/2011. The application is filed in Execution No.32/2024 and memorandum of facts is pertaining to OS No.188/2011. The application is not accompanied with affidavit of any of the

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applicants. On careful perusal of order 5 Rule 3 of C.P.C it appears that where the court sees reason to require personal appearance of the defendant, the summons shall order him to appear in person in court on the day therein specified. The court shall make an order for appearance of the plaintiff, where his personal presence is required. The provision speaks about plaintiff and defendant in respect of a pending suit. In this case OS No.188/2011 is already disposed off and the Judgment debtors have claimed that they have filed an application under Section 151 of C.P.C to reopen the compromise decree dated 11.10.2013. In this case, the Judgment debtors by invoking order 5 Rule 3 of C.P.C are seeking direction to the decree holder to appear in person in OS NO.188/2011, which is already disposed off. As observed supra, the memorandum of facts is pertaining to OS No.188/2011 and not pertaining to the present proceedings. This court can not invoke inherent powers vested under Section 151 of C.P.C to direct the decree holder to appear in OS No.188/2011. I am of the considered opinion that the application is filed in a causal manner by the counsel on record for Judgment debtors No.1, 2 and 5. Order 5 Rule 3 of C.P.C is clearly not applicable to the present application. This court is not inclined to invoke the inherent jurisdiction under Section 151 of C.P.C to compel the presence of decree of holder in OS No. 188/2011. Moreover, the application is opposed by the

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counsel for decree holder by stating that the decree holder is not in station and he is not reachable by his counsel. It is also contended that OS No. 188/2011 is already disposed off and the applicants are at liberty to reopen the case by serving the notice on the other side. The applicants have not produced any document to show that they have made efforts to serve the notice on the plaintiff in OS No.188/2011. Under such circumstances, I am of the opinion that the counsel for Judgment debtors No.1,2 and 5 has not made out grounds to allow the application. Hence, I answer **Point No.1 in the Negative.**

8. **Point No.2** : In view of above findings, this court proceeds to pass the following.

ORDER

I.A. No.XXVI filed by the
counsel for Judgment debtors
No.1,2 and 5 under Order V Rule
III R/w.Sec.151 of C.P.C is hereby
rejected.

No order as to cost.

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The counsel for Decree holder filed I.A. for extension of Temporary Injunction.

Heard and Temporary Injunction is extended till next date.

For hearing by decree holder on objector applications finally by **17-01-2026**

Sd/-

**Prl. Senior Civil Judge & J.M.F.C.,
Devanahalli.**