

KABC010101522020



**IN THE COURT OF THE III ADDL. CITY CIVIL AND  
SESSIONS JUDGE, (CCH-25) AT BENGALURU.**

**DATED: THIS THE 22ND DAY OF JANUARY, 2026.**

**PRESENT :**      **Smt. Nisharani A.C., B.A., LL.B.,**  
III Addl. City Civil and Sessions  
Judge, Bengaluru.

**Ex.NO.1075/2020**

**DECREE  
HOLDER:**                      :    Dega Devakumar Reddy,  
S/o late Dega Ramgopal Reddy,  
A/a 60 yrs,  
Now residing at Villa No.33,  
Cook street, 10 Downing, White  
field, Hoakote road,  
Kannamangala, Bidarnahalli  
Hobli, Bengaluru-67

(By Sri.ACH, Advocate)

**V/S**

**JUDGMENT  
DEBTOR**                                :    M/s.Pushpam Realty,  
No.191, 1<sup>st</sup> cross, 1<sup>st</sup> Block,  
Jayanagar East,Byrasandra,  
Bengaluru, by its Managing  
Partner, Smt.R.S.Veena,  
W/o Dr.N.Manjunatha Reddy

(By Sri.M.R.,, Advocate)

**ORDER ON I.A.No.5**

I.A.No.5 filed by the Judgment Debtor under Sec.151 of CPC, seeking to consider interim application u/Sec.47 r/w Sec.151 of CPC filed by JDR and by conducting enquiry for the fair disposal of the above suit to meet the ends of justice and equity.

2. In support of the application, the Managing partner has sworn to an accompanying affidavit stating the Decree Holder has filed the above Petition on the basis of the Settlement/Compromise Petition in A.C.No.44/2018 dated 22.09.2018 between the DHR and JDR. In view of the above compromise, time was essence of the said compromise and the said stipulated time was subject to Force Majore. Clause (iii) and (iv) of the above compromise speaks about the time and clause (v) speaks about the above timeline subject to Force Majore. The Decree Holder has filed the above petition claiming that JDR have not complied the terms and conditions of the

above Compromise within time i.e., as per clause (iii) and (iv). Our specific case is that, we were not able to complete the project within stipulated time mentioned in the compromise, in view of natural calamities in and around Kodagu District and in view of the Government Order in No.R.D/24/LGO/2018, dated 23.11.2018, to stop conversion of any agricultural land to non-agricultural nature. However, it is very much necessary to bring it to the notice of this Court that the Judgment Debtor had made efforts by corresponding with the Government and the concerned authority by giving number of representations for renewal of Conversion Order in No.BU PA RE/409/2015-16 dated 28.04.2016 and the same was not considered in view of the above Government Order. When such is the case, the question of completing the work within stipulated time does not arises and we were not able to renew the Schedule Property which was converted for commercial purpose vide Conversion Order No. BU PA RE/409/2015-16, dated 28.04.2016. We have

failed to renew the above conversion in view of the above Force Majore (Natural Calamities / land slide). The said conversion or renewal was stopped by the Government of Karnataka itself by virtue of the above Government Order due to land slide (Natural Calamity) in and around Kodagu District, which is nothing but Force Majore, the act of God. The clause (iii) and (iv) with respect to time which is fixed to complete the work are subject to clause (v) i.e., Force Majore. When such is the case, one cannot come to conclusion that, they have failed to comply/act/complete the work as per clause (iii) and (iv). However, our further efforts to renew the above conversion was stopped by the Decree Holder by giving representation to, not to renew the above conversion, claiming that the contract being cancelled. They had filed an Interim Application Under Sec.47 r/w Sec.151 of the CPC with respect to maintainability of the above petition on the above grounds and this Court was not pleased to dispose of the above application with respect maintainability of the above

petition. Hence, this Court shall look into the contents of the accompanied affidavit to the above application, where it is mentioned about clause (v) ie., Force Maiore. Even otherwise, it is very whether the above Petition is premature or not and further to ascertain whether much necessary to conduct detail enquiry into the above Petition to ascertain we the Decree Holder have failed to complete work as per clause (iii) and (iv) in view of clause (v) Force Majore. The above Execution Petition would maintain in the absence of clause (v) of the Compromise i.e.. Force Majore (Natural Calamity) and further Decree Holder for having created confusion and animosity at all offices and authorities concerned thereby delaying and preventing the authorities from issuing necessary compliances to us. In view of the above clause (v) the above petition is premature and to ascertain the same and the reason for failure for renewal of the above conversion, a detail enquiry is required. If the above application is not allowed, they will be put to greater hardship, injury and irreparable

loss and justice will suffer, further leading to multiplicity of proceedings and for fair disposal and on the other hand, no hardship or injury would be caused to otherside. Therefore, prays to allow the application.

3. The DHR has filed objections to I.A.No.5 stating that the instant application is devoid of merits and as such, is frivolous, malafide and vexatious and therefore, deserves to be and should be dismissed. All the averments and contentions in the application are denied, save and except those which are specifically admitted herein. Nothing shall be deemed to be admitted for want of specific traverse and anything that has not been specifically admitted herein shall be deemed to be denied. As a preliminary objection it is stated that the Application u/Sec.47 of CPC which is sought to be heard in the present application has already been heard at length by this Court and this Court vide order dated 10.07.2024 has rendered its judgment with regard to maintainability of the

Execution Petition. The present application has been filed by the Judgment Debtor only with an intention to delay the execution proceedings solely to defeat the Arbitration Award. For the sake of brevity and in an effort to avoid repetition, the contents of objections filed earlier by the Decree Holder to the Application u/Sec.47 of CPC, and further the documents filed in support of the same, may be read as part and parcel to the present objections. The Judgment Debtor approached the Decree Holder for development of Decree Holder and Judgment Debtor entered into a Memorandum of Understanding on 24.06.2013 and executed Joint Development Agreement layout in respect of the schedule property. In furtherance of the same, the on 28.06.2013. Refundable interest free deposit of Rs.7,50,000/- was paid by Judgment Debtor to Decree Holder as consideration. That the Judgment Debtor with a malafide intention and taking advantage of the benevolence of Decree Holder, demanded that they would need the original documents in respect of the

property for commencing any developmental work. Therefore, the Decree Holder submitted all the original documents at the time of execution of JDA dated 28.06.2013. To facilitate the development process, the Decree Holder permitted the Judgment Debtor to use the General Power of Attorney executed in favour of one Mr.K.K.Vishwanath dated 04.12.2008 to get all the necessary permission from the Government Authorities for conversion of land and commence development works. That, even though the formation of layout was supposed to be completed within 12 months of date of approval of plan sanction, the Judgment Debtor did not make any effort to commence the work. The Judgment Debtor obtained the conversion order after much pursuance and aid of the Decree Holder only on 28.04.2016 from Deputy Commissioner of Kodagu. The said conversion order was conditional and the development work was supposed to be completed by Judgment Debtor within two years. In spite of obtaining the conversion order and after four years of

executing the JDA, the Judgment Debtor failed to undertake any kind of work in furtherance of development. And therefore, the Decree Holder filed CMP No.316/2017 before the Hon'ble High Court of Karnataka for appointment of Arbitrator to adjudicate the dispute and Hon'ble Sole Arbitrator Shri.Justice Ashok B Hinchigeri (Former Judge) High Court of Karnataka was appointed in A.C No.44/2018. In the said proceedings, with a malafide intention to defraud the Decree Holder, the Judgment Debtor failed to fairly submit that the conversion order was conditional and had expired during the pendency of the proceedings. That the Decree Holder and Judgment Debtor entered into a compromise on CPC, 1908. As per the said compromise petition, the 22.09.2018 and filed a compromise petition under Order XXIII Rule 3 of the Judgment Debtor agreed to complete the project as per the agreed timeline. It was further agreed by the Judgment Debtor and Decree Holder, under Clause 3(xxi) of the Compromise Petition, that in case of failure to complete

the tasks for a continuous period of 8 weeks, then the Decree Holder can notify that the compromise entered into between the parties, Joint Development Agreement dated 28.06.2013 and Memorandum of Understanding dated 24.06.2013 and General power of Attorney registered as per the Compromise Petition are cancelled.

**3(a).** The agreed terms in the Compromise Petition came to be recorded by the Arbitrator in the final order and the same recorded that both the parties had signed the memorandum of compromise and thereafter the proceedings were disposed off recording these terms. To facilitate the immediate commencement of development works on the land belonging to Decree Holder, the Decree Holder executed a GPA in favour of the Judgment Debtor on 11.10.2018. That Clause 3(iii) provided timelines within which the Judgment Debtor was required to complete the developmental works. However, even after deciding the timelines, the Judgment Debtor was unable to obtain

conversion order and commence the development works. The Development project was not commenced due to the negligent and reckless attitude of the Judgment Debtor. Though the Decree Holder facilitated every request made by the Judgment Debtor towards commencing development work, the Judgment Debtor was unable to commence the project. The actual reason for the Judgment Debtor not being able to do any development work is the lack of funds as the Judgment Debtor undertook various projects simultaneously. The Judgment Debtor has no valid reason whatsoever to show why they have been unable to commence any development work since 2013. Even after ten years of executing the JDA, the Judgment Debtor had not implemented any work due to their own negligence. As per Clause 3 (xxi) of the Memorandum of compromise, the Decree Holder issued legal notices notifying cancellation of the MOU, JDA and GPA executed in favour of Judgment Debtor. Thereafter, the present execution proceedings were initiated as per

Clause 3(xxi) seeking execution of Arbitration Award. That the Judgment Debtor has no intention of carrying out the developmental works and had illegally kept the original documents belonging to the Decree Holder in their custody in respect of the schedule property. Photographs of the schedule premise produced as Annexure-E to the objections of Application u/Sec.47 at pages 49 to 57 may be referred. A perusal of the photographs would reflect that the Judgment Debtor has not undertaken any development works and have left the property to ruins by delaying the proceedings. The Judgment Debtor had kept the original documents belonging to the Decree Holder in their custody only with an intention to financially exploit the Decree Holder. Although the Compromise Petition stipulates Force Majeure Clause, however, the same is applicable for the tasks agreed under the Compromise Petition and Arbitration Award. That due to the sheer negligence, incompetence and utter disregard towards fulfilling contractual obligations, the Judgment Debtor was

unable to commence any development work even after obtaining conversion order in the year 2016. That the Judgment Debtor failed to renew the conversion order on time after it lapsed. The Judgment Debtor has not submitted an iota of proof to show that application for renewal of conversion was pursued by them diligently. Instead, the Judgment Debtor is maliciously relying on the Government circulars dated 23.11.2018 and taking shelter of Force Majeure event which is not applicable in the present case. Therefore, the Judgment Debtor cannot take recourse to the Force Majeure Clause present in the Arbitration Award to evade responsibility for their breach and deceit. That the Judgment Debtor has stated that the conversion order was not renewed due to Force Majeure events and therefore were unable to obtain plan sanction. It is submitted that the Decree Holder submitted an affidavit on 12.05.2022 and a representation on 08.06.2022 for renewal of conversion and obtained an order by the Deputy Commissioner of Kodagu on

28.07.2022 after conducting Geological survey and Forest Clearance. If the Judgment Debtor had intention to proceed with the development work, the Judgment Debtor could have obtained the order in the same way by which Decree Holder obtained Instead of pursuing the officials for appropriate permissions, the Judgment Debtor had resorted to mindlessly issuing representations and filing writ petition in W.P.No.5677/2023 before the Hon'ble High Court of Karnataka only to obtain stay on the present Execution proceedings. The development work did not commence and the JDA came to a standstill due to lack of funds with Judgment Debtor and their negligent acts. However instead, the Judgment Debtor is projecting blame on the Decree Holder and authorities and are taking shelter under Force Majeure events that does not exist. It is pertinent to note that the contentions raised in the present application have already been argued while this Court considered the Application filed u/Sec.47 of CPC challenging maintainability of the Execution Petition. The

Decree Holder invites attention of this Court to the following synopsis of proceedings transpired in the present Execution proceedings:-

| DATE       | PROCEEDINGS                                                                                                                                                                                                                                                                     |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 24.03.2023 | By suppressing materials, the Judgment Debtor obtained stay of Execution proceedings in W.P.No.5677/2023 before the Hon'ble High Court of Karnataka and submitted certified copy of the same before this Court. The matter was deferred for further orders from the High Court. |
| 30.09.2023 | The Counsel for Decree Holder filed memo along with certified copy of order of the Hon'ble High Court of Karnataka whereby the W.P.No.5677/2023 was dismissed on 19.09.2023.                                                                                                    |
| 03.11.2023 | The Counsels for Decree Holder and Judgment Debtor sought time to submit their arguments on merits of Execution Petition.                                                                                                                                                       |
| 05.12.2023 | To delay the Execution proceedings once again, the Judgment Debtor filed IA under Section 47 r/w 151 CPC challenging the maintainability of the Execution Petition.                                                                                                             |
| 13.12.2023 | Decree Holder filed objections to the above IA and also filed an IA under O XI Rule 14 CPC r/w 151 of CPC for production of documents. Matter was adjourned for filing objections and to hear on IA                                                                             |
| 04.01.2024 | Judgment Debtor filed objections to the IA filed by Decree Holder. Matter was adjourned for hearing on IA.                                                                                                                                                                      |
| 17.01.2024 | The Counsel for Judgment Debtor prayed for time.                                                                                                                                                                                                                                |
| 29.01.2024 | The Counsel for Judgment Debtor prayed for time.                                                                                                                                                                                                                                |
| 09.02.2024 | The Counsel for Judgment Debtor submitted that there is a chance for settlement and the matter was deferred for reporting settlement.                                                                                                                                           |
| 02.03.2024 | Since the Judgment Debtor proposed unreasonable terms of settlement not agreeable to the Decree Holder, the Counsel for Decree Holder filed a memo stating that the Decree Holder is not willing to settle the matter. Matter was adjourned for hearing on IA.                  |
| 19.03.2024 | The Counsel for Judgment Debtor filed an application under Order 17 Rule 1 of CPC for adjournment.                                                                                                                                                                              |
| 30.03.2024 | Even on the next date of hearing, when the counsel for                                                                                                                                                                                                                          |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|            | <p>Judgment Debtor was not willing to argue their application on maintainability, the counsel for Decree Holder requested the Court to hear their application for production of documents since the original documents belonging to the property of Decree Holder was in the custody of Judgment Debtor for 11 years.</p> <p>The Counsel for Decree Holder was heard on the application for production of documents. The Counsel for Judgment Debtor filed written arguments for both the applications and once again prayed time to submit arguments.</p> |
| 05.04.2024 | <p>The Counsel for Judgment Debtor prayed for time. Since this Hon'ble Court did not find any grounds for granting adjournment, matter was posted for orders by 10.04.2024.</p> <p>At 5.15 PM, the counsel for Judgment Debtor partly argued the matter and insisted that the issue of maintainability has to be decided first before granting any other order. The matter was adjourned for further arguments on maintainability.</p>                                                                                                                     |
| 10.04.2024 | P.O was on leave.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 20.04.2024 | The Counsel for Judgment Debtor prayed time for further arguments on both applications.                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| 23.04.2024 | The Counsel for Judgment Debtor extensively argued on the issue of maintainability. The matter was adjourned for reply by Decree Holder.                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 28.05.2024 | The Counsel for Decree Holder argued on both the applications and filed written submissions. The Counsel for Judgment Debtor sought time to reply. Matter was adjourned for reply by Judgment Debtor.                                                                                                                                                                                                                                                                                                                                                      |
| 03.06 2024 | The Counsel for Judgment Debtor sought time to reply, Counsel for Decree Hohler objected to the same. Matter was adjourned for reply.                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 06.06.2024 | Pleadings and arguments for both applications were concluded and the matter was posted for orders.                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 10.07.2024 | This Hon'ble Court passed an order directing the Judgment Debtor to submit the documents to be kept in Court custody. In the said order, this Hon'ble Court also addressed the issue of maintainability raised by the Judgment Debtor.                                                                                                                                                                                                                                                                                                                     |

**3(b).** It is submitted that the order dated 10.07.2024 passed by this Court was challenged by the Judgment Debtor before the Hon'ble High Court of Karnataka in W.P.No.20089/2024 wherein it was contended that Application u/Sec.47 was not disposed off. The Hon'ble High Court refused to interfere with the above order vide its order dated 31.07.2024. The said order of the Hon'ble High Court was challenged in the Hon'ble Supreme Court of India by way of Special Leave to Appeal in SLP (Civil) No.19765/2024 on the same contention that the maintainability application was not considered and also urged on Force Majeure. The Hon'ble Supreme Court of India also refused to interfere and therefore, the Judgment Debtor sought for withdrawal of the SLP and the same was dismissed as withdrawn on 30.08.2024. It is pertinent to note that the Judgment Debtor had also initiated Sec.9 proceedings before the Hon'ble Principal District Civil and Sessions Judge, Madikeri in A.A No.1/2024 for initiating Arbitration proceedings once again despite there being a

valid Arbitration Award. Once again, the Section 9 proceedings were initiated only with an intention to distress the Decree Holder. In the said Application, the Judgment Debtor suppressed material facts and obtained ex-parte temporary injunction in respect of schedule property. The Judgment Debtor raised contentions regarding Force Majeure the District and Sessions Judge, Madikeri is produced herewith and marked even in the said application. The Hon'ble Court at Madikeri was pleased to vacate the same vide its order dated 27.08.2024 upon objections being filed by the Decree Holder. The observation made by the Hon'ble Principal District Civil and Sessions Judge, Madikeri, is relevant to the present application which is as under:-

*“18. Advocate for the applicant strongly argued that, in view of the clause of force majeure the completion of the project was not in his hand and therefore, the Respondent cannot contend that, within the time limit prescribed by the compromise petition, he cannot complete the work. No doubt, both Joint Development Agreement as well as Memorandum of Understanding are entered between the parties in June 2013 itself. Further, the schedule lands are*

*converted in the year 2016 and sanction has been obtained in order to develop the land is also in the year 2016. As it is well known to all that, in Coorg the natural calamities occurred in the year 2018 in the month of August. If at all the lands are converted in the year 2016, what prevented the applicant from completing the developmental work within 2 years, that is from 2016 to 2018 is also not explained by him. No doubt, as per the documents submitted by the applicant itself, only in the year 2018 the Government has issued the Notification by contending that till the decision and notification of the Disasters Committee, no conversion can be occurred with regard to the schedule properties. However, before this Notification itself the lands are converted by the parties for the non agricultural use and further, approval has been granted in favour of the applicant in order to use that land and to construct a Hotel in the schedule property. The lapse of 2 years from the applicant from 2016 to 2018 is also not explained by the party. **However, taking the advantage of force majeure clause and the notification of 2018, the applicant was contending that, he cannot complete the project is not fair.**"*

When the Hon'ble Court at Madikeri posted the matter for hearing on maintainability, the Judgment Debtor sought for withdrawal of the Application. The Hon'ble Principal District Civil and Sessions Judge, Madikeri dismissed the Arbitration Application by imposing penalty for initiating frivolous proceedings and wasting valuable

time of the Court. All the contentions raised in the present application have already been argued by the Judgment Debtor extensively, the same is forthcoming even in the written submissions filed by both the Judgment Debtor and the Decree Holder. This Hon'ble Court has considered all the rival contentions while passing the consolidated order dated 10.07.2024 and therefore, does not require to be reconsidered. The Judgment Debtor by way of the present application is indirectly attempting to reargue/reagitate the matter which ought not be permitted. That the Judgment Debtor have already urged before the Hon'ble High Court of Karnataka and the Hon'ble Supreme Court of India that the Application u/Sec.47 has not been considered by this Hon'ble Court. Both the Hon'ble High Court and the Apex Court have refused to entertain the plea of the Judgment Debtor. Further, the Judgment Debtor had filed an application for recalling of the order dated 10.07.2024 wherein they have also contended that the maintainability application was not considered. This Court vide its order

dated 16.11.2024 dismissed the said application for recalling and made the following observations:-

*"12. Also the Counsel for JDR himself argued at length with respect to the maintainability. After hearing both the sides only this Court passed orders on maintainability....."*

When things stand thus, the Judgment Debtor has once again maliciously maintainability by way of the present application. The Hon'ble High Courts approached this Court to reconsider the Application for and Hon'ble Apex Court have time and again reiterated that the right to reap fruits of litigation by way of judgments, orders and directions without any delay is also a right akin to fundamental right. The legal maxim "justice delayed is justice denied" continues to serve as a guiding principle, urging Courts to ensure that litigants' rights are protected in a timely manner. The Judgment Debtor have been relentlessly attempting to ensure delay of Execution of the Arbitration Award dated 22.09.2018. Such attempts by the Judgment Debtor should be condemned by the Execution

Courts and therefore, the present application requires to be dismissed with exemplary cost.

4. The Points that arise for my consideration is as under.

1. Whether the I.A.No.5 filed by the Judgment Debtor deserves to be allowed?

2. What order?

5. Heard arguments of both the sides.

6. The learned counsel for the JDR has filed written arguments stating that the Judgment Debtor entered appearance in the above Execution Proceedings and filed detailed Statement of Objections to the Execution Petition filed by the Decree Holder. The Judgment Debtor has also filed an IA under Section 47 of CPC seeking this Court to hold that the present Execution Petition filed by the Decree Holder is not maintainable.

**Lack of Executable Award:**

The present Execution Petition was filed on 02.06.2020. On such date of filing of the Execution Petition, there was no executable award passed by the Arbitral Tribunal in AC No.44/2018. The compromise dated 22.09.2018 is only an arrangement entered between the parties to further the scope of Memorandum of Understanding dated 24.06.2018 and Joint Development Agreement dated 28.06.2013. As there was no executable Award passed by the Tribunal under the provision of Section 30 and 31 of the Arbitration and Conciliation Act, 1996, on an objection raised by the registry of this Court the Decree Holder seems to have approached the Arbitration Tribunal to pass an award. Thus the Arbitration Tribunal passed a belated award dated 17.12.2021, much after the disposal and termination of the Arbitration Proceedings (22.09.2018). Further, as on the date of filing of the Execution Petition, there was no existence of an executable award and the alleged compromise award belatedly passed on 17.12.2021 after termination of the

proceedings and on the Arbitrator having become **"Functus Officio"** is not a valid executable award which can be sustained in law. Such an award is without authority and beyond the scope of reference in violation of the provisions of the Arbitration and Conciliation Act, 1996. Hence, this execution petition to execute such an award is not maintainable. The Decree Holder has filed the present execution Petition against this Judgment Debtor and sought for a direction to the Judgment Debtor to return the original documents in respect of the subject matter and further sought for a direction for cancellation of the Joint Venture Agreement dated 28.06.2013 entered between the Decree Holder and the Judgment Debtor. It is submitted that the Decree Holder is not entitled for return of the documents and other reliefs as sought in the present Execution Petition. The subject matter pertains to Joint Development Agreement dated 28.06.2013 entered into between the Decree Holder and Judgment Debtor. The Decree Holder is an owner of certain lands at K Badaga

Village, Madikeri Hobli, Kodagu District and the Judgment Debtor is a Developer. The Judgment Debtor being the Developer agreed to develop a layout with civic/common facilities as per the sanction plan and construction plan and construction of villas as per approved layout plan. But, the Judgment Debtor was unable to get approvals for the project due to certain issues such as Phodi etc., which was attributable to the Decree Holder. As things stood at this stage, the Decree Holder invoked the Arbitration Clause as envisaged in the Joint Development Agreement and filed a Claim Petition before Hon'ble Sole Arbitrator Shri. Justice Ashok B.Hinchigeri (Former Judge), High Court of Karnataka seeking certain prayers. This Judgment Debtor entered appearance. During the pendency of the above said Arbitration Proceedings, the Decree Holder and Judgment Debtor entered into Compromise which was recorded under a Memorandum of Compromise under Order XXIII Rule 3 of CPC on 22.09.2018. As per the above said Compromise, both the parties have agreed to

certain terms and conditions to be performed. On recording the Memorandum of Compromise on 22.09.2018, wherein the terms and conditions were provided, the Hon'ble Arbitrator was pleased to dispose off the Arbitration case in AC No.44/2018 in terms of the said compromise and the said Arbitral Proceedings were terminated. It is relevant to point out that on disposal of the arbitration proceedings and termination of the same, no Arbitration Award was passed by the Hon'ble Tribunal under the provisions of Section 30 and 31 of the Arbitration and Conciliation Act, 1996. That this Hon'ble Court may be pleased to read the terms and conditions of the Settlement dated 22.09.2018 as part and parcel of this written arguments. As per the terms of the Compromise, the Decree Holder allowed the judgment debtor to complete the project of the aforementioned lands and agreed to certain terms and conditions which are contractual terms and the said settlement is merely a contract with the imprimatur of the Hon'ble Arbitrator. In order to prove that

it is a contract and not an executable award, it is relevant to extract few relevant portions of settlement dated 22.09.2018 entered between the parties. The Clause No III states as follows:-

*"The Developer/Respondent shall carryout layout works of Claimant's share and same shall be completed within 64 weeks as per the time line enclosed to this petition as ANNEXURE-C from **the date of Plan Sanction**. The Claimant, Respondent and the 3<sup>rd</sup> party evaluator, namely, Mr.Pramod Rai or any mutually agreed third party evaluator shall carry out the joint inspection of all the works in accordance with this Petition. In case if there are any minor works pending, a list shall be prepared by the 3rd party evaluator and handed over to both the parties herein. Same shall be completed within 30 days' time from the submission of the list and the owner's share shall be handed over to him to his full satisfaction. With the handing-over of developed owner's share, the developer shall also stand discharged from all the obligations agreed under this Compromise Petition."*

7. Further, Clause No.IV states as follows:-

*"The Parties agree and confirm that the maximum time to obtain the Plan Sanction is 6 months from the date of this Compromise Petition. It is further agreed by the Respondent that if the Respondent fails to obtain the same by then, 8 weeks' time may be extended by the Claimant. However, if the Plan is not sanctioned within 8 months from the date of this Compromise Petition, the project*

*implementation would stand halted on account of cessation of relationship between the parties as the owner and developer in respect of the schedule land. The Respondent shall return the original documents and the Claimant would refund the deposit of Rs.7,50,000/-, For getting the podi work done and getting the land converted from agricultural to non-agricultural character and for incurring the incidental expenses, the claimant shall compensate and reward the respondent by giving 2.5 acres of the schedule land in the location of the respondent's choice, free of cost, i.e., without taking any consideration from the respondent.*

*v. All the agreed timelines regarding construction are subject to Force Majeure.*

*On careful reading of the above said terms of the Settlement and other terms of the same, it is manifestly clear that the parties have entered into another contract, which is part and parcel of the Joint Development Agreement, dated 28.06.2013 with the imprimatur of the Hon'ble Arbitrator.”*

Even before the parties entered into the above said compromise the Judgment Debtor had already obtained the conversion order in respect of the subject lands vide DC Conversion Order dated 28.04.2016 and the said conversion order has a validity period of 2 years. But, the said validity period of conversion expired as on the date of settlement and on recognition of such effort that to this

effect that the settlement terms incorporated giving 2.5 acres to the Judgment Debtor towards the expense and effort for the same. After the above said settlement, the Decree Holder was obligated to execute GPA in favour of the Judgment Debtor to enable them to proceed with all sanctions and permissions. The Decree Holder had executed General Power of Attorney in favour of the Judgment Debtor. After the Power of Attorney was executed by the Decree Holder, the Judgment Debtor applied for renewal of the conversion order as the same had expired. When the Judgment Debtor applied for renewal of conversion, the Government of Karnataka as a policy, took a decision vide its order dated 22.11.2018, suspending all conversion orders due to heavy rainfall in Kodagu Region and vast natural devastation due to land sliding in Kodagu. That due to the above said ban imposed by the Government of Karnataka in the Kodagu Region, the Judgment Debtor was unable to get renewal of the Conversion Order. The said notification issued by the

Government of Karnataka banning conversion orders in the Kodagu Region is beyond control of the Judgment Debtor and the said Ban shall be treated as force majeure as agreed by both the parties. That after taking necessary confirmation from the Decree Holder, the Judgment Debtor has moved all necessary papers with the Mysore Urban Development Authority (in short 'MUDA') for necessary approvals of development plan. The Judgment Debtor on several occasions made representations to the Deputy Commissioner, Kodagu requesting for renewal of Conversion Order. Whenever the Judgment Debtor requested for renewal of conversion order, the same was rejected by the DC Office, intimating the continuance of the Ban on the conversion order. The Judgment Debtor has not only made representations to the Deputy Commissioner but also made several representations to the Principal Secretary, Revenue and also Chief Secretary of the Government of Karnataka for consideration of renewal of Conversion Order. Due to the above said

reasons, the Judgment Debtor was not able to obtain the renewal of conversion order which is beyond the control of the Judgment Debtor. The Judgment Debtor has made all his efforts to renew the Conversion Order, which is a primary document to proceed with the further plan and approvals to complete the project as per the terms of the compromise. The Judgment Debtor has informed the above said hindrances, faced in execution of the project, to the Decree Holder and all the hindrances were well within the knowledge of the Decree Holder. As the Decree Holder was well aware of the impediments, by mutual consent the time was extended till 01.12.2019. That in spite of the best efforts of the Judgment Debtor, the Government Policy at the relevant point of time did not allow the Judgment Debtor to obtain renewal of conversion order, due to the prolonged ban imposed by the Government of Karnataka. Moreover, due to the rain related natural calamities in the region and the region having become a sensitive ecosystem, several additional clearances from Mines and

Geology department, Forest Department etc. were imposed to renew the conversion order. The process was once again stalled due to the pandemic from mid-March-2020 onwards. This further precipitated the administrative delays which were beyond the control of the Judgment Debtor. All the above said hindrances amount to force majeure and the terms of settlement dated 22.09.2018; as per the Clause No.5 of the same reads as **"all the agreed timelines regarding construction are subject to force majeure"**. The Judgment Debtor also contended in his application that the Judgment Debtor could not take up the project since there was a natural calamity declared during 2019 in the Coorg area where the subject lands are situated and thereafter the declaration of lockdowns from time to time starting from March-2020 due to the COVID-19 pandemic situation. Therefore, the above said incidents are within the definition of force majeure and same prevented the Judgment Debtor from completion of the project. Though these aspects are within the knowledge of

decree holder, instead of cooperating with the Judgment Debtor in obtaining the renewal of conversion order for completion of the project as per letter and spirit of the Compromise, the present Execution Petition is filed. That a bare reading of the compromise dated 22.09.2018 stipulates certain conditions and such conditions were agreed to be fulfilled by the Judgment Debtor subject to force majeure clause as stipulated in Clause No.5 of the same compromise dated 22.09.2018. Now due to filing of the Execution Petition and non-cooperation of decree holder the Judgment Debtor is unable to complete the project as per terms and conditions of the Settlement dated 22.09.2018. Due the pendency of the above Execution Petition, the Judgment Debtor was unable to take necessary steps for obtaining renewal of conversion order. It is relevant to point out that though the Judgment Debtor obtained the renewal of the conversion order, the Judgment Debtor is not able to proceed with the further approvals and plans as per the terms of the settlement as

the Decree Holder revoked the General Power of Attorney. Moreover, the Decree Holder is creating roadblocks at every office and authorities concerned thereby delaying the permissions and clearances. Due to such reasons, the Judgment Debtor is not in a position to further proceed with the progress of the work in terms of the settlement dated 22.09.2018. The Decree Holder is responsible for the present state of affairs. The Decree Holder, even after repeated requests and demands by the Judgment Debtor, has not come forward to fulfill his part of obligation as per the Settlement dated 22.09.2018. The Decree Holder has been adopting various destabilization tactics to torpedo the whole project and cause loss to the Judgment Debtor. Instead of cooperating with the Judgment Debtor, in terms of the settlement, the Decree Holder has filed the present Execution Petition, which is not maintainable. The Decree Holder is not entitled for any prayers as sought in the Execution Petition as the settlement is in the nature of a contract and the terms and conditions of the settlement are

still performable and the judgment debtor is always ready to fulfill his part of obligation. Thus the prayer sought in the Execution Petition in the present circumstances of the case is pre-mature and cannot be granted by this Hon'ble Court as the terms and conditions of the settlement dated 22.09.2018 are still in force between the parties. Now, due to the negative attitude developed by the Decree Holder, the Judgment Debtor is unable to proceed with the project.

**Lack of Jurisdiction:-**

Apart from the above said contention, the present Execution Petition is also not maintainable as this Hon'ble Court has no territorial jurisdiction to entertain the present Execution Petition. The present Execution Petition is arising out of a compromise dated 22.09.2018 recorded by the Hon'ble Sole Arbitrator. The dispute before the Arbitrator between the Decree Holder and the Judgment Debtor arose out of a registered Joint Development Agreement dated 28.06.2013. The schedule properties involved in the Joint Development Agreement dated

28.06.2013 are situated at K.Bagada Village, Madikeri Taluk, Kodagu District. Hence, the Decree Holder ought to have filed present Execution Petition before the Civil and Sessions Judge at Madikeri. The Decree Holder instead of filing the present Execution Petition before the District Court Madikeri, filed the same before this Hon'ble Court which has no jurisdiction. That on an earlier occasion when a dispute arose with respect to the above Joint Development Agreement dated 28.06.2013, the Judgment Debtor had filed an Arbitration Application in AA No.1/2017 for interim measure under Section 9(1) of the Arbitration and Conciliation Act, 1996 before the **Hon'ble District Civil and Sessions Judge at Madikeri**. The Decree Holder entered appearance in the above said proceedings and contested the proceedings. Having done so, it is now not open for the Decree Holder to indulge in any forum shopping. The Decree Holder was well aware that the present proceedings are not maintainable for lack of Jurisdiction but chose to file the present Execution Petition

before this Hon'ble Court. It is relevant to extract the definition of "Court" as defined in Section 2(e) (i) of the Arbitration and Conciliation Act, 1996:-

**"2(e). "Court" means-**

*(i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;*

Section 42 of the Arbitration and Conciliation Act, 1996; reads as under:-

**"42. Jurisdiction-** *Notwithstanding anything else contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court".*

It is respectfully submitted Since the first application under Section 9(1) of the Arbitration and Conciliation Act,

1996 was filed and contested before the Hon'ble District Civil and Sessions Judge at Madikeri, section 42 mandates that the very same court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of **that agreement and the arbitral proceedings shall be made in that Court**. Thus, the Decree Holder ought to have filed present Execution Petition before the Civil and Sessions Judge at Madikeri, which alone has jurisdiction in accordance with Section 42 of the Arbitration and Conciliation Act, 1996. Hence, the present Execution Petition is liable to be rejected for lack of jurisdiction. Thus, as the subject properties involved in the Joint Development Agreement dated 28.06.2013 are situated at K.Bagada Village, Madikeri Taluk, Kodagu District and since the first proceedings were initiated before the Civil and Sessions Judge at Madikeri, the Decree Holder ought to have filed the present Execution Petition before the Civil and Sessions Judge at Madikeri only. Hence, the present

Execution Petition is liable to be rejected for want of Jurisdiction. On a bare reading of the terms of the settlement entered between the parties, it is clear that the said compromise is a mere contract and if there is any violation of such contract, the parties are at liberty to invoke arbitration clause and seek an award. The Judgment Debtor on relies the following Citations/Authorities in support of his case:

***a) C.F.Angadi Vs. Y.S.Hirannayya reported in (1972) 1 SCC 191***

***b) Manish Mohan Sharma and others Vs. Ram Bahadur Thakur Ltd. and others reported in (2006) 4 SCC 416.***

In view of the above submissions the present Execution Petition filed by the Decree Holder is not maintainable and hence, the Judgment Debtor prays to allow the application and dismiss the present Execution Petition with costs.

The JDR has also filed memo with following Judgments in support of his arguments.

**1. *Transport Corporation of India Ltd. V/s. Haryana State Industrial; Development Corporation Ltd., AIR 1991 P &H 225.***

**2. *Jai Narain Ram Lundia V/s. Kedarnath Khetan AIR 1956 SC 75.***

7. The learned counsel for the DHR has filed notes of arguments stating that:

**A. Factual Matrix:**

The Judgment Debtor had approached the Decree Holder for development of layout in respect of the schedule property bearing Sy Nos. 81, 82, 80/10 situated at K Badaga Village, Madikere Taluk, Kodagu District totally measuring 15 acres 93 cents. In furtherance of the same, the Decree Holder and Judgment Debtor entered into a Memorandum of Understanding on 24.06.2013 and executed Joint Development Agreement on 28.06.2013. Refundable interest free deposit of Rs. 7,50,000/- (Rupees Seven Lakhs Fifty Thousand only) was paid by Judgment Debtor to Decree Holder as consideration. The Judgment

Debtor with a malafide intention and taking advantage of the benevolence of Decree Holder, demanded that they would need the original documents in respect of the property for commencing any developmental work. Therefore, the Decree Holder submitted all the original documents at the time of execution of JDA dated 28.06.2013. To facilitate the development process, the Decree Holder permitted the Judgment Debtor to use the General Power of Attorney (GPA) executed in favour of one Mr. K K Vishwanath dated 04.12.2008 to get all the necessary permission from the Government Authorities for conversion of land and commence development works. That, even though the formation of layout was supposed to be completed within 12 months of date of approval of plan sanction, the Judgment Debtor did not make any effort to commence the work. The Judgment Debtor obtained the conversion order after much pursuance and aid of the Decree Holder only on 28.04.2016 from Deputy Commissioner of Kodagu. The said conversion order was

conditional and the development work was supposed to be completed by Judgment Debtor within two years. It requires to be stated that, in spite of obtaining the conversion order and after four years of executing the JDA, the Judgment Debtor failed to finalize plan sanction or undertake any kind of work in furtherance of development. After obtaining the conversion order, the Judgment Debtor failed to initiate or conclude the finalization of the project/plan sanction. When repeatedly called upon by the Decree Holder to complete the plan sanction process without further delay, the Judgment Debtor, instead of complying with the binding terms of the Joint Development Agreement (JDA), attempted to unlawfully impose execution of a General Power of Attorney (GPA) containing conditions and powers far in excess of and in direct contravention of the JDA. Upon enquiry, the Decree Holder unearthed that the Judgment Debtor had clandestinely entered into negotiations with a five-star hotel entity and, to facilitate such unauthorized

commercial arrangement, intentionally withheld and delayed the project sanction. The Decree Holder was taken aback to discover that the Judgment Debtor, in a blatant, intentional, without any intimation to Decree Holder and mala fide breach of the JDA, sought to convert the agreed residential development into a commercial hotel and resort project, thereby committing a gross violation of contractual obligations and acting in complete disregard of the Decree Holder's lawful rights. And therefore, the Decree Holder filed CMP No. 316/2017 before the Hon'ble High Court of Karnataka for appointment of Arbitrator to adjudicate the dispute and Hon'ble Sole Arbitrator Shri. Justice Ashok B Hinchigeri (Former Judge) High Court of Karnataka was appointed in A.C No. 44/2018. In the said proceedings, either by their negligent and reckless attitude or with a malafide intention to defraud the Decree Holder, the Judgment Debtor failed to fairly submit that the conversion order was conditional and had expired during the pendency of the proceedings.

That the Decree Holder and Judgment Debtor entered into a compromise on 22.09.2018 and filed a compromise petition under Order XXIII Rule 3 of the Code of Civil Procedure, 1908. As per the said compromise petition, the Judgment Debtor agreed to complete the project as per the agreed timeline. It was further agreed by the Judgment Debtor and Decree Holder, under Clause 3(xxi) of the Compromise Petition, that in case of failure to complete the tasks for a continuous period of 8 weeks, then the Decree Holder can notify that the compromise entered into between the parties, Joint Development Agreement dated 28.06.2013 and Memorandum of Understanding dated 24.06.2013 and General power of Attorney registered as per the Compromise Petition are cancelled. Clause 3(xxi) of the Compromise Petition dated 22.09.2018 provides as under:-

*"xxi. The parties agree and confirm that in case of failure of completion of the tasks as per Annexure-C for a continuous period of 8 weeks, as per the timelines decided it shall be open to the Claimant to notify that the compromise entered into between the parties, Joint*

*Development Agreement dated 28.06.2013 and Memorandum of Understanding dated 24.06.2013 and General power of Attorney to be registered as per this Compromise Petition are cancelled. Consequently the project-implementation would stand halted on account of cessation of relationship between the parties as the owner and developer in respect of the schedule land. The Respondent shall return the original documents and the Claimant would refund the deposit Rs. 7,50,000/-"*

The agreed terms in the Compromise Petition came to be recorded by the Arbitrator in the final order and the same recorded that both the parties had signed the memorandum of compromise and thereafter the proceedings were disposed off recording these terms. To facilitate the immediate commencement of development works on the land. the Decree Holder executed a General Power of Attorney (GPA) in favour of the Judgment Debtor on 11.10.2018. Even at this stage, the Judgment Debtor had failed to disclose that the conversion order had lapsed and required renewal. The Judgment Debtor informed the Decree Holder of this fact only on 24.06.2019, i.e., eight months after the arbitral award had been passed. On the

very next day, the Decree Holder issued a legal notice cancelling the compromise, JDA, and MoU. Thereafter, the Judgment Debtor requested the Decree Holder to grant an extension of time for completion of the project. After several deliberations, and relying upon further assurances made by the Judgment Debtor, the Decree Holder extended the time period for obtaining plan sanction and commencement of the project until 01.12.2019. That Clause 3(iii) provided timelines within which the Judgment Debtor was required to complete the developmental works. However, even after deciding the timelines, the Judgment Debtor was unable to obtain conversion order and commence the development works. The Development project was not commenced due to the negligent and reckless attitude of the Judgment Debtor. Though the Decree Holder facilitated every request made by the Judgment Debtor towards commencing development work, the Judgment Debtor was unable to commence the project. The actual reason for the Judgment Debtor not

being able to do any development work is the lack of funds as the Judgment Debtor undertook various projects simultaneously. The Judgment Debtor has no valid reason whatsoever to show why they have been unable to commence any development work since 2013. Even after ten years of executing the JDA, the Judgment Debtor has not implemented any work due to their own negligence. As per Clause xxi of the Memorandum of compromise, the Decree Holder issued legal notices dated 16.12.2019 and 22.02.2020 notifying cancellation of the MoU, JDA and GPA executed in favour of Judgment Debtor. [Kindly refer memo dated 06.06.2024 filed by Decree Holder; Document No. 2 and 3 at pages 3 & 4-5]. Thereafter, the present execution proceedings were initiated seeking return of original documents in respect of schedule property as agreed in the Compromise Petition, which is in the custody of Judgment Debtor and directing cancellation of JDA and MOU. The Judgment Debtor instead of attending the present proceedings. approached the

Hon'ble High Court of Karnataka and Hon'ble Supreme Court of India with an intention to delay the present proceedings and obtained an order of stay of the execution proceedings. The Judgment Debtor has no intention of carrying out the developmental works and have illegally kept the original documents in their custody in respect of the schedule property. A perusal of the photographs would reflect that the Judgment Debtor has not undertaken any development works and have left the property to ruins by delaying the project and present proceedings. The Judgment Debtor has kept the original documents in their custody only with an intention to financially exploit the Decree Holder. That the Judgment Debtor has not undertaken any work as falsely claimed by them and are not entitled to any relief. The podi work was done in the year 2007-08 itself. That the Judgment Debtor has stated that the conversion order was not renewed due to Force Majeure events and therefore were unable to obtain plan sanction. It is submitted that the Decree Holder submitted

an affidavit on 12.05.2022 and a representation on 08.06.2022 for renewal of conversion and obtained an order by the Deputy Commissioner of Kodagu on 28.07.2022 after conducting Geological survey and Forest Clearance. If the Judgment Debtor had intention to proceed with the development work, the Judgment Debtor could have obtained the order in the same way by which Decree Holder obtained. Further, Clause 3(v) of the Arbitration Award states that all the agreed timelines regarding construction are subject to Force Majeure. Perusal of the government order dated 23.11.2018, would show that the ban imposed by the Government of Karnataka was on conversion alone and not on approval of plan sanction. The delay is solely attributable to the negligence of the Judgment Debtor and they cannot take the shelter of Force Majeure event. It is a well settled principle of law that force majeure clause is intended to excuse a party's non-performance only when such failure is due to extraordinary events beyond their reasonable

control and not a result of their own fault or lack of diligence. It is not a free-for-all protection. The development work did not commence and the JDA came to a standstill due to lack of funds with Judgment Debtor and their negligent acts. However instead, the Judgment Debtor is projecting blame on the Decree Holder and authorities and are taking shelter under Force Majeure events that does not exist in the present case. The Decree Holder has notified termination of the contractual relationship with the Judgment Debtor as the same has come to a cessation. The Judgment Debtor however are delaying the proceedings by not letting the dispute come to a conclusion only with an intention to defraud and financially exploit the Decree Holder by keeping the original documents in their custody. The said fraudulent and duplicitous acts of Judgment Debtor should not be encouraged.

**Maintainability:-** The arbitral award passed by the Hon'ble sole arbitrator having attained finality, the same

cannot be challenged u/Sec.47 of CPC in the execution proceedings merely to delay the rights of decree holder.

The Hon'ble High Court of Karnataka in the case of

**Bellary Nirmithi Kendra v. M/s Capital Metal Industries  
(C.R.P. No. 100067 of 2022) (Coram: C.M. Poonacha, J.)**

has laid down observations and held as under:-

*24. The Hon'ble Supreme Court in the case of Morgan Securities & Credit (P) Ltd., v. Modi Rubber Ltd., while considering as to whether the provisions of Act of 1996 would prevail over the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985, noticing the provisions of Act of 1996, has held as follows:*

*"40. An award under the 1996 Act indisputably stands on a different footing vis-à-vis an award made under the Arbitration Act, 1940. Whereas under the 1940 Act, an award was required to be made a rule of the court to make it enforceable, the 1996 Act, however, raises a legal fiction. When an award is made, an application under Section 34 is required to be filed questioning the validity thereof. Once such an application is filed, it remains under suspension in the sense that it would not be enforceable. Only upon expiry of the period specified in Section 34 to challenge an award or when such objection is refused, the same would become enforceable. Section 36 merely specifies as to how such an award can be enforced by laying down that it can be enforced as if it were a decree.*

*41. The legal fiction created under Section 36 has, therefore, a limited application. An award is, thus, to be treated to be a decree even without intervention of the court only for the purpose of its enforceability."*

The Hon'ble Supreme Court in the case of Government of India v. Vedanta Limited, while considering a question as to the limitation for filing an enforcement/execution petition of a foreign award under Section 46 of the Act of 1996, has held as follows:-

*"69. Section 36 of the Arbitration Act, 1996 creates a statutory fiction for the limited purpose of enforcement of a "domestic award" as a decree of the court, even though it is otherwise an award in an arbitral proceeding [Umesh Goel v. H.P. Coop. Group Housing Society Ltd., (2016) 11 SCC 313: (2016) 3 SCC (Civ) 795]. By this deeming fiction, a domestic award is deemed to be a decree of the court [Sundaram Finance Ltd. V. Abdul Samad, (2018) 3 SCC 622: (2018) 2 SCC (Civ) 593], even though it is as such not a decree passed by a civil court. The Arbitral Tribunal cannot be considered to be a "court", and the arbitral proceedings are not civil proceedings. The deeming fiction is restricted to treat the award as a decree of the court for the purposes of execution, even though it is, as a matter of fact, only an award in an arbitral proceeding. In Paramjeet Singh Patheja v. ICDS Ltd. [Paramjeet Singh Patheja v. ICDS Ltd., (2006) 13 SCC 322], this Court in the context of a domestic award, held that the fiction is not intended to make an award a decree*

*for all purposes, or under all statutes, whether State or Central. It is a legal fiction which must be limited to the purpose for which it was created.*

*70. A Constitution Bench of this Court in Bengal Immunity Co. Ltd. V. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 2 SCR 603: AIR 1955 SC 661], held that legal fictions are created only for some definite purpose. A legal fiction is to be limited to the purpose for which it was created, and it would not be legitimate to travel beyond the scope of that purpose, and read into the provision, any other purpose how so attractive it may be. ...." (emphasis supplied)*

A coordinate Bench of the Allahabad High Court in the case of M/s.Larsen & Toubro Limited v. M/s Maharaji Educational Trust considering a similar situation has held as follows:

*"15. The use of words "the award shall be enforced under the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court" in section 36 of the Act would not mean that the provisions of the Code of Civil Procedure with regard to execution of decree would become applicable in the execution of the award. Section 36 only creates a fiction that an award would be enforceable as if it were a decree of the Court within the scope of Order XXI C. P. C. This enforcement of the award under Order XXI CPC would not attract the application of Section 47 CPC simply by use of the expression "shall be*

*enforceable as a decree" in Section 36 nor Section 36 can be read independent of other provisions contained in the Act itself. The provisions of the Act are to be reconciled with each other. Section 36 cannot be read out of context and independent of the scheme of the Act. Reference to another statute does not attract application of such other statute to the referring statute unless expressly provided. A reference in a statute to another statute cannot be read in a manner to invite inconsistency in the referring statute. Any such reference, if made, has to be interpreted in the context in which the reference is made so as not to make inconsistent the provisions of the referring statute itself. If it brings inconsistency, then the same is to be avoided. If Section 47 CPC is to be attracted, then the restrictions provided in Section 34 of the Act and finality to arbitral award by virtue of Section 35 of the Act would be redundant. Section 36 cannot be interpreted in the manner inconsistent with the provisions contained in the other part of the Act. That apart the finality of the decree under the Code is reached after the decision under Section 47 C. P. C., if raised. But the legislature in its wisdom thought it fit to incorporate the scope similar to Section 47 C. P. C. in Section 34 of the Act in order to bring finality before the award becomes executable. Same procedure cannot be expected to be incorporated in a statute twice. Legislature can never be interpreted to intend repetition. At the same time, the object of the Act is directed towards speedy and hazard-free finality with a view to avoid long drawn proceeding based on technicalities. Therefore, having regard to the provisions of Sections 13, 16, 34 and 35, Section 36 cannot be interpreted in a manner inconsistent with any of the provisions of the Act to attract the*

*provisions contained in the Code in its entirety. Therefore, while considering the application filed under Section 36 of the Act for the execution of an award, the Court cannot overlook the scope and ambit within which the Court is to execute the award taking aid of the provisions for execution contained in the CPC not inconsistent with the provisions contained in the 1996 Act. Therefore, in my view, Section 47 CPC cannot be attracted despite the words "in the same manner as if it were a decree of the Court" used in Section 36 when the award is sought to be executed thereunder.*

*16. The matter can be viewed from another angle. Section 47 CPC provides for questions to be determined by the Court executing the decree. The said section reads as under:*

*17. It is, thus, clear that in order to invoke section 47 CPC, there must be a decree. Section 2 (2) CPC defines the decree. For a decision or determination to be a decree, it must necessarily fall within the fore-corners of the language used in the definition. Section 2 (2) CPC defines decree to mean "formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 144, but shall not include - (a) any adjudication from which an appeal lies as an appeal from an order, or (b) any order of dismissal for default. Explanation. A decree is preliminary when further proceedings have to be taken before the suit can be*

*completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final.*

*18. The use of words "adjudication" and "suit" used by Legislature clearly goes to show that it is only a court which can pass a decree in a suit commenced by plaint adjudicating the dispute between the parties by means of a judgment pronounced by the Court. The Hon'ble Apex Court in the case of Paramjeet Singh Patheja v. ICDS Ltd.. AIR 2007 SC 168 after considering the definition of decree as contained in CPC in paragraph 29 has held that "it is obvious that an arbitrator is not a Court, an arbitration is not an adjudication and, therefore, an award is not a decree". Again in paragraph 31, it has been held that words "decision", and "Civil Court" unambiguously rule out an award by arbitrators to be a decree. In the said case, the Hon'ble Apex Court while considering the question as to whether an insolvency notice under Section 9 of the Presidency Town Insolvency Act, 1909 can be issued on the basis of an arbitration award, held that such notice cannot be issued for the reason the arbitration award is neither a decree nor an order for payment within the meaning of Section 9(2) of the Insolvency Act and it is not rendered in a suit. Thus, the award not being covered under the definition of a decree, objection with respect to its validity can only be raised as provided under Section 34 of the Act and not by taking resort to section 47 C. P. C. 20.*

*The issue that an award made in arbitral proceedings is not a decree within the meaning of CPC having been settled by the aforesaid pronouncement by the Hon'ble Apex Court, the provisions of Section 47 C. P.*

*C. cannot be available to obstruct the execution of the award.*

*Thus, having regard to the provisions of Sections 5, 12, 13, 16, 34, 35 and 36 of the Act, the irresistible conclusion is only grounds which can be pressed into service for challenge to an award is within the ambit and scope of Section 34 of the Act. Once the stage of section 34 is over and the questions that were raised or could have been raised at that stage cannot be allowed to be raised again and again by pressing into service section 47 of the Code of Civil Procedure at the time of execution of award under Section 36 of the Act. In view of the aforesaid facts and discussions, the applicant did not have any right to challenge the enforceability of the award by taking recourse to Section 47 C. P. C. and the same were liable to be dismissed. It is altogether different question that the objections have been dismissed by the court below on different grounds and reasons but since they are liable to be dismissed, the impugned order does not require any interference. The revision accordingly stands dismissed. Although it is the vehement contention of the learned counsel for the petitioner that having regard to Section 36 of the Act of 1996 the award passed under the provisions of the Act of 1996 is to be treated as a decree and Section 47 of the CPC could be invoked, it is relevant to note that having regard to Section 36(1) of the Act of 1996, the award passed under the provisions of the said Act is required to be construed as a decree only for the purpose of enforcement of the same and it is not open to the petitioner to invoke Section 47 of the CPC before the executing Court. Having regard to the judgments of the Hon'ble Supreme Court in the cases of Paramjeet Singh*

*Patheja, Morgan Securities, Vedanta Limited, this Court is in complete agreement with the view expressed in Larsen and Tubro as well as State of Tripura and in view of the said authoritative pronouncements, it is clear that the petitioner cannot take recourse of Section 47 of the CPC in the execution proceedings initiated by the respondent."*

The Hon'ble High Court of Allahabad reiterated the above judgment in the case of **State Of U.P. And 5 Others vs Shri Raj Veer Singh dated 16 April, 2024 (Matter under Art. 227 No. 6346 of 2022) (Neutral Citation No. 2024:AHC:66171)**

"8. The scope of Section 47 of the CPC, 1908 was explained by the Hon'ble Supreme Court recently in its judgment in Pradeep Mehra v. Harjivan J. Jethwa reported in 2023 SCC OnLine SC 1395 (Coram: Sanjay Kishan Kaul and Sudhanshu Dhulia, JJ.). Relevant paragraphs have been extracted below:

*"10. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the "execution of the decree". The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had*

*allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.*

*11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in **Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534**, in para 24, it had stated thus:*

*"24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing."*

*This Court noted further:*

*".....The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not*

*purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.*

13. *The reality is that pure civil matters take a long time to be decided, and regrettably it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In **Rahul S. Shah v. Jinendra Kumar Gandhi, (2021) 6 SCC 418**, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:*

*"23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice."*

14. *The above judgment is an important judgment in respect of Section 47 as well as Order XXI, CPC as the three Judge Bench decision of this Court not only condemned the abuse of process done in the garb of exercise of powers under Section 47 read with Order XXI, CPC, but also gave certain directions to be followed by all Civil Courts in their exercise of powers in the execution of a decree. It further directed all the High Courts to update and amend their Rules relating to the execution of decrees so that the decrees are executed in a timely manner. As far as Section 47 is concerned, this Court had stated as under:*

*"24. In respect of execution of a decree, Section 47 CPC contemplates adjudication of limited nature of issues relating to execution ie. discharge or satisfaction of the decree and is aligned with the consequential provisions of Order 21 CPC Section 47 is intended to prevent multiplicity of suits. It simply lays down the procedure and the form whereby the court reaches a decision. For the applicability of the section, two essential requisites have to be kept in mind. Firstly, the question must be the one arising between the parties and secondly, the dispute relates to the execution, discharge or satisfaction of the decree. Thus, the objective of Section 47 is to prevent unwanted litigation and dispose of all objections as expeditiously as possible.*

*25. These provisions contemplate that for execution of decrees, executing court must not go beyond the decree. However, there is steady rise of proceedings akin to a retrial at the time of execution causing failure of realisation of fruits of decree and relief which the party seeks from the courts despite there being a decree in their favour. Experience has shown that various objections are filed before the executing court and the decree-holder is deprived of the fruits of the litigation and the judgment-debtor, in abuse of process of law, is allowed to benefit from the subject-matter which he is otherwise not entitled to.*

*26. The general practice prevailing in the subordinate courts is that invariably in all execution applications, the courts first issue show-cause notice asking the judgment-debtor as to why the decree should not be executed as is given under Order 21 Rule 22 for certain class of cases. However, this is often misconstrued*

*as the beginning of a new trial. For example, the judgment-debtor sometimes misuses the provisions of Order 21 Rule 2 and Order 21 Rule 11 to set up an oral plea, which invariably leaves no option with the court but to record oral evidence which may be frivolous. This drags the execution proceedings indefinitely.”*

This Court then gave certain directions, which were to be mandatorily followed by all Courts dealing with civil suits and execution proceedings. Two of its directions were as follows:

*"42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.*

*42.12. The executing court must dispose of the execution proceedings within six months from the date of filing which may be extended only by recording reasons in writing for such delay."*

*16. It further directed all the High Courts to update their Rules relating to execution of decrees. It was as under:*

*"43. We further direct all the High Courts to reconsider and update all the Rules relating to execution of decrees, made under exercise of its powers under Article*

*227 of the Constitution of India and Section 122 CPC, within one year of the date of this order. The High Courts must ensure that the Rules are in consonance with CPC and the above directions, with an endeavour to expedite the process of execution with the use of information technology tools. Until such time these Rules are brought into existence, the above directions shall remain enforceable."*

**"23. In India Oil Corporation Ltd. and Anr. v. Commercial Court and Anr. reported in 2023 SCC OnLine All 809 (Coram: Neeraj Tiwari, J.) this Court held that an arbitral award is not a decree and objections under Section 47 of the CPC, 1908 would not be maintainable against an arbitral award. Relevant paragraphs have been extracted herein:**

*"46. Again the very same issue of filing of objection under Section 47 of CPC came before this Court in the matter of Bharat 20 Pumps and Compressors Ltd. (supra) and Court following the ratio of law laid down by this Court in the matter of Larsen & Tubro Limited (Supra) has held as follows:-*

*"22. The Arbitration Act, 1940 is self-contained, complete code and section 17 thereof is in pari-materia with section 36 of the Arbitration & Conciliation Act, 1996. Section 20 thereof, provides for challenging the appointment of an Arbitrator. The revisionist never challenged appointment of the Arbitrator under section 20 thereof. Sections 30/33 and 37 of the Arbitration Act, 1940, read with Article 119 of the Limitation Act, give provision for an application to be filed within 30 days of notice of*

*award; however, no such application within the said period was filed by the revisionist.*

*23. The arbitration award by way of friction is executed as decree, but it is not a decree as defined under section*

*2(2) of CPC and therefore, the objection under section 47 of CPC, which was filed only in execution of decree (as defined under section 2(2) CPC), is not maintainable in the proceedings seeking execution of award." 47. This Court has again taken view that arbitral award is not a decree under Section 2(2) of CPC, therefore, objection filed under Section 47 of CPC is not maintainable. 48. To conclude this point on the basis of undisputed fact, objection under Section 47 of CPC filed against the arbitral award is not maintainable as the same is not a decree under Section 2(2) of CPC. Further, arbitral award can be executed invoking Section 36 of New Act, 1996 alongwith the provisions of CPC in the same manner as if it is decree of the Court."*

**In Bellary Nirmithi Kendra v. M/s Capital Metal Industries (C.R.P. No. 100067 of 2022) (Coram: C.M. Poonacha, J.) the Kerala High Court held that recourse to Section 47 of the CPC, 1908 cannot be taken in execution proceedings under Section 36 of the Act. Relevant paragraphs are extracted below:**

*"30. Although it is the vehement contention of the learned counsel for the petitioner that having regard to Section 36 of the Act of 1996 the award passed under the provisions of the Act of 1996 is to be treated as a decree and Section 47 of the CPC could be invoked, it is relevant*

*to note that having regard to Section 36(1) of the Act of 1996, the award passed under the provisions visions of the said Act is required to be construed as a decree only for the purpose of enforcement of the same and it is not open to the petitioner to invoke Section 47 of the CPC before the executing Court.*

*31. Having regard to the judgments of the Hon'ble Supreme Court in the cases of Paramjeet Singh Patheja. Morgan Securities. Vedanta Limited, this Court is in complete agreement with the view expressed in Larsen and Tubro as well as State of Tripura and in view of the said authoritative pronouncements, it is clear that the petitioner cannot take recourse of Section 47 of the CPC in the execution proceedings initiated by the respondent."*

The Hon'ble High Court of Karnataka headed the Chief Justice in Suo motu case has held as under:

*6.3 The casual, lethargic and insensitive approach on the part of the authorities towards the compliance of the orders and directions of the courts cannot be tolerated. It has to be dealt with sternly. As the justice delayed is justice denied, too belated compliance is not to be countenanced, but has to be viewed as contempt of court itself committed in disguise or in indirect manner.*

*6.4 As right to approach the court is a fundamental right, right to reap the fruits of litigation by getting the judgments, orders and directions of the court implemented without booking any delay unimpeded by the lethargic*

*conduct on the part of the authorities, is also a right akin to fundamental."*

**C. Jurisdiction:**

The contention raised by the Judgment Debtor regarding this Hon'ble Court not having jurisdiction is liable to be rejected in the light of the decision of the Hon'ble Supreme Court in **Sundaram Finance Ltd v. Abdul Samad reported in (2018) 3 SCC 622**, wherein the Hon'ble Supreme Court has held that the Arbitration Award can be executed/enforced anywhere in the Country.

*"20. We are, thus, unhesitatingly of the view that the enforcement of an award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings."*

In the case of **Cheran Properties Limited vs Kasturi and Sons Limited and others; (2018) 16 SCC 413**, the Hon'ble Supreme Court after considering the issue regarding jurisdiction in the light of various judgements of the Supreme Court has held as under;

"40. ....

*Consequently, in the view of the Court, the enforcement of an award through its execution can be initiated anywhere in the country where the decree can be executed and there is no requirement of obtaining a transfer of the decree from the court which would have jurisdiction over the arbitral proceedings."*

That since the Judgment Debtor operates their business in Bangalore, they would be subjected to the jurisdiction of this Hon'ble Court. The Decree Holder in the execution proceedings has sought for return of the title documents which are in the custody of the Judgment Debtors and therefore this Hon'ble Court has jurisdiction.

**D. Self-contained code:**

The Arbitration and Conciliation Act, 1996, is a self-contained code. The Arbitration Act serves as a comprehensive and self-contained legal framework, encompassing various aspects such as the appointment of arbitrators, initiation of arbitration proceedings, issuance of awards including their execution, and the resolution of challenges to arbitral awards. The primary objective of the

Arbitration Act is to minimise the supervisory role of courts in the arbitration process. Section 5 of the Arbitration Act commences with the phrase "notwithstanding anything contained in any other law for the time being in force". This broad language signifies the legislative intent to curtail judicial intervention during arbitration. In the specific context of Section 5 of the Arbitration Act, it mandates that the provisions outlined in Part I of the Arbitration Act should be fully effective and operational, regardless of any other existing laws. The incorporation of non obstante clauses by the legislature serves to eliminate obstacles that might hinder the operation of the legislation. Arbitration is designed to achieve a prompt, efficient, and conclusive resolution of disputes arising between parties concerning their substantive obligations. Therefore, the entire exercise of arbitration undertaken should not be nullified.

**E. Previous Appeals before the Hon'ble High Court of Karnataka and Hon'ble Supreme Court of India:**

**a. W.P No. 20089/2024**

i. The Judgment Debtor challenged the above order in W.P No.20089/2024 before the High Court of Karnataka on the ground that the Execution Court could not have passed the order without adjudicating on the question of maintainability. The Judgment Debtor further contended that there was no executable arbitral award.

ii. The Hon'ble High Court, at the stage of admission after perusing the documents submitted by the Decree Holder and the memorandum of Writ Petition, by its order dated 31.07.2024 disposed the Writ Petition by confirming the order passed by this Hon'ble Court. During the writ Proceedings, the Judgment Debtor made a false submission that the Decree Holder had not executed GPA in terms of the Compromise Petition and Arbitration Award, when infact the Decree Holder had executed GPA on 11.10.2018. Therefore, the Hon'ble High Court opined that

the question as to whether Power of Attorney was executed in terms of the memorandum of settlement and in terms of the award is something which has to be considered by the Executing Court. The Hon'ble High Court further directed the Judgment Debtor to deposit the original documents before the executing court to be kept in safe custody of Executing Court till the enquiry is held and orders are passed by the Executing Court.

**b. SLP (Civil) No. 19765/2024:**

i. The Judgment Debtor challenged above order of the Hon'ble High Court of Karnataka, in Petition for Special Leave to Appeal in SLP (Civil) No. 19765/2024 before the Hon'ble Supreme Court of India. A perusal of the SLP would show that even before the Hon'ble Supreme Court, the Judgment Debtor had urged the grounds of lack of executable award and territorial jurisdiction, among other grounds.

ii. For the convenience of this Court, the grounds raised by the Judgment Debtor is extracted;

"5.3 BECAUSE the Hon'ble High Court proceeded to consider the issue on merits without considering whether the Execution Petition filed by the Respondent was maintainable.

5.4 BECAUSE the Hon'ble Single Judge failed to adjudicate on a specific prayer raised by the Petitioner insofar as the Executing Court had to direct itself to the Application under Section 47 of the CPC to decide whether it had the jurisdiction to test the Settlement Award in Executing Proceedings.

5.6 BECAUSE the Hon'ble High Court has failed to consider whether the Executing Court has the jurisdiction to entertain a petition over which it has no territorial jurisdiction as the land which is the subject matter of the Settlement Award is situated in Madikeri.

5.8 The above sequence of events would demonstrate that the Execution Petition was filed in respect of an Order which had no existence in the eyes of law. Therefore, the Executing Court had no jurisdiction to

entertain execution proceedings. This is a glaring error which both the Executing Court and the High Court has failed to answer.

5.13 Because the Ld. Single Judge erred in coming to the conclusion that the question as to whether the Power of Attorney was executed in terms of the Award is something which has to be considered by the Executing Court without:

a. Taking into account the fact that the Execution Petition was pre-mature.

b. The terms and conditions of the Compromise dated 22.09.2018 was still in force.

c. That the Judgment Debtor/Petitioner filed Detailed objections to the Execution Petition and also an Application under Section 47 of the CPC, which is currently pending and has not yet been disposed off.

5.17 BECAUSE the proceedings before the Executing Court is a contravention to Sections 30, 34, and 42 of the Arbitration Act, 1996. An Executing Court cannot

decide the legality of an Award passed in terms of Section 30 of the Arbitration Act. An Executing does not have the jurisdiction to indirectly interfere in an Arbitration Award.

5.18 Furthermore, the jurisdiction of an Executing Court is ousted in view of Section 42 of the Arbitration and Conciliation Act, 1996 as the Petitioner has preferred an application under Section 9 of the Arbitration Act, 1996 and that Court alone has jurisdiction to determine questions arising from the Arbitration."

iii. After arguing the matter at some length, the Hon'ble Supreme Court refused to interfere with the order of Hon'ble High Court which confirmed the order of this Court, since the Judgment Debtor had violated the terms of Compromise as agreed in the Arbitration Award. Hence, the Judgment Debtor sought permission to withdraw the appeal and the said Petition was dismissed as withdrawn on 30.08.2024. Thus, the issue in respect of maintainability has attained finality.

iv. The Judgment Debtor finally produced and submitted the documents before the Executing Court only on 30.08.2024 after the Hon'ble Supreme Court of India dismissed the Special Leave Petition in SLP (Civil) No. 19765/2024.

**c. W.P No. 8353/2025:**

i. After exploring all forums, the Judgment Debtor then filed an application under Section 151 of CPC for recalling the order dated 10.07.2024 once again with an intention to delay the execution of the Arbitration Award. This Court after hearing both the parties was pleased to dismiss the Application for recalling and further imposed cost on the Judgment Debtor. Thereafter petition was preferred challenging the order of dismissal of recalling application by the Judgment Debtor.

ii. The Hon'ble High Court, after careful consideration of the abuse of process of Court by the Judgment Debtor, dismissed the writ petition with the following observation;

"18. The contention of the learned senior counsel is that this Court can now entertain the plea of jurisdiction as that is not considered by the coordinate Bench. I decline to accept the said submission. ***The petitioner having exhausted every conceivable avenue from the Executing Court to this Court and finally to the Apex Court, where even the last refuge was abandoned without liberty, now seeks to breathe life into a contention already laid to rest. It must be noted with concern that the petitioner's conduct is not merely a legal misadventure, but borders on abuse of judicial process. What the petitioner now seeks is not justice, but indulgence, not for correction of any error, but perpetuation of delay. The petitioner projects a plea, though dressed anew, smacks of staleness and artifice. The attempt to repackage previously rejected argument or arguments that are previously given up with cosmetic, linguistic change, cannot but be termed, to be an abuse of the process of the law. The doctrine of constructive res judicata, as elucidated by the Apex court in the afore-quoted judgment, unequivocally forecloses the present attempt. Judicial time, precious it is, already exhausted in the matter cannot be again diverted, to what is clearly a closed chapter. This Court, cannot permit litigation, to be transformed into a theatre of endless grievance. In the light of the foregoing analysis and the authoritative pronouncements quoted, this Court finds no infirmity, let alone perversity, in the order impugned.***

19. The issue is return of the original documents. In terms of the agreement, both the decree holder and the judgment debtor have exchanged original documents.

*Having suffered a decree, the judgment debtor is dodging the issue of return of documents. As noted hereinabove, it is undoubtedly an abuse of the process of law by the judgment debtor to somehow drag on the proceedings. Section 42 of the Act no doubt renders jurisdiction to a Court to entertain an execution petition. The said plea having been turned down, this Court finds no warrant to interfere with the order that is now passed which does not indicate any perversity.*

*20. Petition lacking in merit stands rejected, with costs of ₹1,00,000/-to be paid by the petitioner/judgment debtor to the respondent/decree holder. Interim order, if any operating, shall stand dissolved."*

The Judgment Debtor solely to defeat the Decree Holder from reaping fruits of the Arbitration Award dated 22.09.2018, has time and again preferred vexatious petitions and delayed the execution of Arbitration Award dated 22.09.2018. The Decree Holder has been battling the dispute with the Judgment Debtor since 2013. By repeatedly filing frivolous and vexatious petitions, the Judgment Debtor is abusing the process of law and preventing the matter from reaching its rightful conclusion. **Since the issue of maintainability has already been subject of appeal before the Hon'ble Supreme Court of**

**India, Hon'ble High Court of Karnataka and even contended before this Hon'ble Court, the same issue ought not be reconsidered.**

The present execution proceedings is pending for almost six years and the Judgment Debtor on one pretext or the other is trying to further delay the matter by filing frivolous applications. Such attempts by the Judgment Debtor should be condemned by the Execution Courts. The Decree Holder has already notified cancellation of Joint Development Agreement, Memorandum of Understanding and General Power of Attorney dated 11.10.2018. Despite several requests, the Judgment Debtor illegally retained the original documents in respect of schedule property. It requires to be noted that the Compromise Petition and the Arbitration Award require the Judgment Debtor to return the original title deeds in respect of Schedule property after the Decree Holder notifies cancellation of the JDA, MOU and the GPA. When there is no contractual relationship between the parties

and the project implementation is stalled, the original title deeds in respect of schedule property have to be returned to the Decree Holder as per the Arbitration Award. And the Judgment Debtor had illegally kept the original title deeds which is now in the custody of this Hon'ble Court. Therefore, the main relief sought by the Decree Holder is return of original title deeds in respect of Schedule Property which in essence would execute the Award. Therefore, prays to reject the application.

8. The learned counsel for the DHR in support of his arguments has also filed memo with list of citations on 28.05.2024:-

1. Bellary Nirmithi Kendra V/s M/s. Capital Metal Industries in C.R.P. No.100067/2022- Karnataka High Court.

2. State of U.P. And 5 others V/s. Shri Raj Veer Singh dated in Matter under Art.227 No.6346/2022

(Neutral citation No.2024:AHC:66171)- Allahabad High Court.

3. Suo Motu case- Karnataka High Court.

4. Sundaram Finance Ltd v. Abdul Samad reported- (2018) 3 SCC 622.

5. Cheran Properties Limited vs Kasturi and Sons Limited and others- (2018) 16 SCC 413.

9. The learned counsel for the DHR in support of his arguments has also filed memo on 08.05.2025 to produce the Judgment dated 08.07.2025 passed by the Hon'ble High Court of Karnataka, Bengaluru in W.P.No.8353/2025:-

***“Para No.18. The contention of the learned senior counsel is that this Court can now entertain the plea of jurisdiction as that is not considered by the coordinate Bench. I decline to accept the said submission. The petitioner having exhausted every conceivable avenue from the Executing Court to this Court and finally to the Apex Court, where even the last refuge was abandoned without liberty, now seeks to breathe life into a contention already laid to rest. It must be noted with concern that the petitioner's conduct is not merely a legal misadventure, but borders on abuse of***

***judicial process. What the petitioner now seeks is not justice, but indulgence, not for correction of any error, but perpetuation of delay. The petitioner projects a plea, though dressed anew, smacks of staleness and artifice. The attempt to repackage previously rejected argument or arguments that are previously given up with cosmetic, linguistic change, cannot but be termed, to be an abuse of the process of the law. The doctrine of constructive res judicata, as elucidated by the Apex court in the afore-quoted judgment, unequivocally forecloses the present attempt. Judicial time, precious it is, already exhausted in the matter cannot be again diverted, to what is clearly a closed chapter. This Court, cannot permit litigation, to be transformed into a theatre of endless grievance. In the light of the foregoing analysis and the authoritative pronouncements quoted, this Court finds no infirmity, let alone perversity, in the order impugned.” Therefore, prays to allow the petition.***

**10.** My answer to the above points are as under:

Point No.1 :- In the Negative,

Point No.2 :- As per final order,  
for the following;

**REASONS:**

**11. POINT NO.1:** This application filed by the Judgment Debtor under Sec.151 of CPC, seeking to consider interim application u/Sec.47 r/w Sec.151 of CPC

filed by JDR and by conducting enquiry for the fair disposal of the above suit to meet the ends of justice and equity.

**12.** In the annexed affidavit he states that the JDR and the DHR have filed this petition on the basis of settlement/ AC No.44/2018 dated:22.09.2018 between the above parties. Because of force majeure ( natural the terms of conditions of settlement deed are not completed as per the stipulated time he did all his efforts before the concerned authority to obtain conversion order to show his attempts for obtaining conversion order he has filed some of the documents. Therefore, to allow the application and to conduct enquiry for the fair disposal.

**13.** On the other hand the DHR have filed their objections specifically denied the avarements in the applications.

**14.** The preliminary objections stated by the JDR is that the maintainability of the EP which is already heard

and this court on 10.07.2024 has already passed an order with respect to the maintainability of the EP. It is true that both the DHR and JDR are entered in to the compromise petition before Honbl'e arbitrator and JDR herein admitted for the completion terms and conditions within the time line. The development works are not commenced because of the negligent and reckless attitude of Judgment debtor and not because of the force majeure a sufficient time was taken by the JDR even after force majeure,even then he has failed to obtain the conversion order. The JDR has stated that conversion order was not renewed due to force majeure events and therefore unable to obtain plan sanction. It is submitted that JDR has filed an affidavit on 12.05.2022 under representation on 08.06.2022 for renewal of conversion and obtain an order by the deputy commission of Kodagu on 28.07.2022 in the same way the JDR would have been obtained the order from the JDR. He has filed documents to show that even after his efforts to obtain conversion order, it is not

obtained because of Force Majore and it is not by negligence.

**15.** The DHR Counsel also narrated proceedings in the execution petition the same is reiterated herein:-

| DATE       | PROCEEDINGS                                                                                                                                                                                                                                                                     |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 24.03.2023 | By suppressing materials, the Judgment Debtor obtained stay of Execution proceedings in W.P.No.5677/2023 before the Hon'ble High Court of Karnataka and submitted certified copy of the same before this Court. The matter was deferred for further orders from the High Court. |
| 30.09.2023 | The Counsel for Decree Holder filed memo along with certified copy of order of the Hon'ble High Court of Karnataka whereby the W.P.No.5677/2023 was dismissed on 19.09.2023.                                                                                                    |
| 03.11.2023 | The Counsels for Decree Holder and Judgment Debtor sought time to submit their arguments on merits of Execution Petition.                                                                                                                                                       |
| 05.12.2023 | To delay the Execution proceedings once again, the Judgment Debtor filed IA under Section 47 r/w 151 CPC challenging the maintainability of the Execution Petition.                                                                                                             |
| 13.12.2023 | Decree Holder filed objections to the above IA and also filed an IA under O XI Rule 14 CPC r/w 151 of CPC for production of documents. Matter was adjourned for filing objections and to hear on IA                                                                             |
| 04.01.2024 | Judgment Debtor filed objections to the IA filed by Decree Holder. Matter was adjourned for hearing on IA.                                                                                                                                                                      |
| 17.01.2024 | The Counsel for Judgment Debtor prayed for time.                                                                                                                                                                                                                                |
| 29.01.2024 | The Counsel for Judgment Debtor prayed for time.                                                                                                                                                                                                                                |
| 09.02.2024 | The Counsel for Judgment Debtor submitted that there is a chance for settlement and the matter was deferred for reporting settlement.                                                                                                                                           |
| 02.03.2024 | Since the Judgment Debtor proposed unreasonable terms of settlement not agreeable to the Decree Holder, the Counsel for Decree Holder filed a memo stating that the Decree Holder is not willing to settle the matter. Matter was adjourned for hearing on IA.                  |

|            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19.03.2024 | The Counsel for Judgment Debtor filed an application under Order 17 Rule 1 of CPC for adjournment.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 30.03.2024 | <p>Even on the next date of hearing, when the counsel for Judgment Debtor was not willing to argue their application on maintainability, the counsel for Decree Holder requested the Court to hear their application for production of documents since the original documents belonging to the property of Decree Holder was in the custody of Judgment Debtor for 11 years.</p> <p>The Counsel for Decree Holder was heard on the application for production of documents. The Counsel for Judgment Debtor filed written arguments for both the applications and once again prayed time to submit arguments.</p> |
| 05.04.2024 | <p>The Counsel for Judgment Debtor prayed for time. Since this Hon'ble Court did not find any grounds for granting adjournment, matter was posted for orders by 10.04.2024.</p> <p>At 5.15 PM, the counsel for Judgment Debtor partly argued the matter and insisted that the issue of maintainability has to be decided first before granting any other order. The matter was adjourned for further arguments on maintainability.</p>                                                                                                                                                                            |
| 10.04.2024 | P.O was on leave.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 20.04.2024 | The Counsel for Judgment Debtor prayed time for further arguments on both applications.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 23.04.2024 | The Counsel for Judgment Debtor extensively argued on the issue of maintainability. The matter was adjourned for reply by Decree Holder.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 28.05.2024 | The Counsel for Decree Holder argued on both the applications and filed written submissions. The Counsel for Judgment Debtor sought time to reply. Matter was adjourned for reply by Judgment Debtor.                                                                                                                                                                                                                                                                                                                                                                                                             |
| 03.06.2024 | The Counsel for Judgment Debtor sought time to reply, Counsel for Decree Holder objected to the same. Matter was adjourned for reply.                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| 06.06.2024 | Pleadings and arguments for both applications were concluded and the matter was posted for orders.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 10.07.2024 | This Hon'ble Court passed an order directing the Judgment Debtor to submit the documents to be kept in Court custody. In the said order, this Hon'ble Court also addressed the issue of maintainability raised by the Judgment Debtor.                                                                                                                                                                                                                                                                                                                                                                            |

Therefore, initially Hon'ble High Court of Karnataka, Bengaluru in WP No.20089/2024 dated:31.07.2024 has directed this court to conduct the enquiry then to pass an order on the said EP subsequently. Later on JDR has preferred another WP No.8353/2025 dated:08.07.2025 against the DHR herein, the Hon'ble High Court of Karnataka, has passed an order observing in detail regarding the maintainability of execution petition and also regarding the abuse process of law taken by JDR against D HR and the said WP was dismissed by Hon'ble High Court of Karnataka, by imposing cost of Rs.1,00,000/-. Therefore, by relaying on the observation of Hon'ble High Court of Karnataka, Bengaluru in WP 8353/2025 dated 08.07.2025, the IA filed by the JDR for enquiry u/sec 151 of CPC IA.No. 5 is hereby rejected. Therefore, I answer this point in the '**Negative**'.

**15. POINT No.2:-** For the foregoing reasons, I proceed to pass the following:-

**ORDER**

I.A.No.5 filed by the JDR under  
Sec.151 of CPC, is hereby rejected.

(Dictated to the Steno Gr.II, transcript thereof, typed by  
her on computer, after correction pronounced by me in open  
Court on this **22<sup>nd</sup> day of January, 2026**).

**(NISHARANI A.C)  
III ADDL. CITY CIVIL AND  
SESSIONS JUDGE, BENGALURU.**