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, 1st cross, 1st 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.6

I.A.No.6 filed by the Judgment Debtor under Sec.47 r/w Sec.151 of CPC, seeking to hold the present execution petition filed by the DHR is not maintainable and to dispose of accordingly to meet the ends of justice.

2. In support of the application, the Managing partner has sworn to an accompanying affidavit stating the Decree Holder has filed the above Petition to execute the terms and conditions of the Compromise / Settlement Petition entered between the parties herein before the Arbitrator and the said Petition is premature. I further submit that the Decree Holder herein during the course of proceedings of the above Petition has created third party right title interest in and over the Properties in question by way of creating Registered documents named and styled as Absolute Sale Deeds dated: 07.02.2024 in favour of one M/s VDB & IDC Project LLP. In view of the above creation of third party right title interest in over the property in question, the Decree Holder loses his right title interest in over the property in question and the documents of the same. When such is the case the question of Decree Holder continuing with the above execution petition does not arises and the above Petition is not maintainable as the Property in question is transferred to third party as mentioned above. The right to execute the Decree by the Decree Holder seizes in view of the above transfer. In view of the same, right to sue or to execute the Decree transfers to assignee. However, the said transaction is null and void. Hence, this Execution Petition is not maintainable with respect to the Decree Holder on record. If the above application is not allowed, JDR will be put to greater hardship, injury and irreparable loss and justice will suffer and further leading to multiplicity of proceedings and on the other hand, no hardship or injury would be caused to other side. Therefore, prays to allow the application.

3. The DHR has filed objections stating that the instant application is devoid of merits and as such is frivolous, mala fide and vexatious and therefore, deserves to be and should be dismissed. At the further outset, 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. The Decree Holder is the sole and absolute owner of the property bearing Sy.No.81, measuring about 3 acres 64 cents, Sy.No.82 measuring 1 acre 67 cents, Sy.No.80/10P1 measuring 7 acres 62 cents and Sy.No.80/10P2 measuring 3 acres, in total measuring 15 acres 93 cents situated at K Badaga Village, Madikere Taluk, Kodagu District. The Judgment Debtor approached the Decree Holder for development of layout in respect of the schedule property. 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. 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 de original documents at the time of execution of IDA dated 28.06.2013. To facilitate the development process, the Deurne 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 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, 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 belonging to Decree Holder, the Decree Holder executed a General Power of Attorney (GPA) in favour of the Judgment Debtor on 11.10.2018. That Clause 3(iii) provided timelines within which the Judgment

Debt was required to complete the developmental works. However, even af deciding the timelines, the Judgment Debtor was unable to ob conversion order and commence the development works. 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 commeming 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 Debtur 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 IDA. 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 25.06.2019 and

22.02.2020 notifying cancellation of the MOU, JDA and GPA executed in favour of Judgment Debtor. 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 was never co-operative with the Decree Holder and had no intention to commence any developmental work. During the present proceedings as well, Judgment Debtor has not appeared regularly before this Hon'ble Court, and on 21.09.2021 an order was passed to issue arrest notice to Judgment Debtor. That the Judgment Debtor instead of attending the present proceedings, approached the Hon'ble High Court of Karnataka in W.P No. 5677/2023 with an intention to delay the present proceedings and obtained an order of stay of the execution proceedings. The Hon'ble High Court dismissed the said Petition on 19.09.2023. Copy of the order dated 19.09.2023 passed by the Hon'ble High Court in W.P No. 5677/2023 is produced herewith and marked as Annexure-A. The Judgment Debtor has filed the present application with malafide intention to not adhere to the terms agreed in the Compromise petition in arbitration proceedings in A.A.No.44/2018. That the Hon'ble Sole Arbitrator assisted the Decree Holder and Judgment Debtor arrive at a settlement and terms of compromise were recorded in writing by the Arbitrator on 22.09.2018 and the proceedings attained finality. That the Hon'ble Arbitrator substantially dealt with all the issues in dispute between the parties and recorded the terms of the settlement and passed an order disposing the proceedings. The same itself is final Arbitral order and is executable. It is pertinent to state that the Arbitration and conciliation Act, 1996, does not mandate that settlement between parties has to be in the format of Award as prescribed. That inspite of the issuance of legal notice and initiation of present execution proceedings, with utter disregard to the law and courts, the Judgment Debtor continued to represent the Decree Holder and issued letters to the authorities seeking sanction of plan and renewal of conversion order. Therefore, the Decree Holder approached the jurisdictional sub-registrar for registration of the final Arbitral order. However, it was intimated by the sub-registrar that the order was not in the format for registration. Thereafter, the Decree Holder approached the Hon'ble Sole Arbitrator and requested the award to be passed in the format as prescribed solely for the purpose of registration. Copy of the final Arbitral Award dated 22.09.2018 is produced herewith and marked as Annexure-B. Copy of the Settlement Award is produced herewith and marked as Annexure-C. A bare perusal of both the orders would show that the contents of the final Arbitral order is reproduced verbatim in the Settlement Award. That the request was made to the Hon'ble Arbitrator only for the limited purpose of registering the order to stop the Judgment Debtor from causing any damage to schedule property belonging to the Decree

Holder. Copy of the extract of EC recording the same registration of settlement award is produced herewith and marked as Annexure-D. That the Judgment Debtor has no intention of carrying out the developmental works and have illegally kept the original documents belonging to the Decree Holder in their custody in respect of the schedule property. Photographs of the schedule premise is produced herewith and marked as Annexure-E. 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 present proceedings. The Judgment Debtor has kept the original documents belonging to the Decree Holder 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. Copy of the Mutation Register extract reflecting podi for the year 2007-08 is produced herewith and marked as Annexure-F

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. Copy of the representation dated 08.06.2022 is produced herewith and marked as Annexure-G. Copy of the order of conversion order dated 28.07.2022 is produced herewith and marked as Annexure-H. 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 has resorted to mindlessly issuing representations and filing writ petition before Hon'ble High Court of Karnataka only to delay the present Execution proceedings. It is submitted that 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. The Decree Holder has learnt that the Judgment Debtor do not have sufficient funds to proceed with the development work as agreed in the JDA and the Compromise Petition and therefore 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. The Decree Holder is unable to utilize the schedule premises for the past ten years since the

Judgment Debtor have illegally kept the original documents taking advantage of benevolence of the Decree Holder. As has been clear from perusal of the photographs of the schedule property produced, the Judgment Debtor have not maintained the schedule property in a good condition let alone commence any development work. The Judgment Debtor has been unable to commence any developmental works on the property belonging to the Decree Holder from the last ten years due to lack of funds and the Decree Holder is undergoing huge financial loss and irreparable damage because of the same. In view of the same, the present application ought to be dismissed with cost.

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

1. Whether the I.A.No.6 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.

<u>Lack of Executable Award:</u>

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 3rd 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 where 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 21 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 53****4, 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 regretfully 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 he 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 nandatorily 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 during the course of her arguments 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 her 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.47 r/w Sec.151 of CPC, seeking to hold the present execution petition filed by the DHR is not maintainable and to dispose of accordingly to meet the ends of justice.

12. This application is also filed by JDR stating that the execution petition is not maintainable in the said affidavit by JDR stating that even though the DHR herein entered in compromise petition before honble arbitrator and the present proceedings are pending before this court the DHR has created registered documents named and styled as absolute sale deed dated:07.02.2024 infavour of M/s VDB and IDC project LLP. In view of the creation of third party right interest over the property in question and the documents of the same therefore, this petition itself is not maintainable.

13. On the other hand the DHR filed their memo stating that to adopt the objections of IA.No. 5 objections to IA.No. 6.

14. initially this EP is arising out of the arbitration award before honlbe arbitrator both parties are entered in to the compromise petition before honble arbitrator the

JDR has failed to complete the terms and conditions of compromise petition within the time.

14. The EP is filed by the DHR. Earlier he has filed an application stating that the EP is not maintainable on the ground of the jurisdiction this court has passed an order 10.07.2025 the same is challenged by the JDR before Hon'ble High Court of Karnataka, Bengaluru wherein the said petition is dismissed. The JDR has also challenged the same before Hon'ble apex court for filing a special leave petition. Then he has also conducted some of proceedings before the Hon'ble High Court of Karnataka, Bengaluru the same is narrated by the DHR and the same is mentioned below:-

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.
29.01.2014	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 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. 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.
05.04.2024	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. 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.
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.

15. The Hon'ble High Court of Karnataka, in WP 8358/2025 has confirmed the orders on maintainability dated:10.07.2025 and also passed an order stating that the JDR is dragging the matter and observed that it is nothing, but abusing process of law. Therefore, as this court has already passed on order of maintainability and the same is confirmed by Hon'ble High Court of Karnataka, the application filed by JDR again question in the maintainability does not arise for consideration.

16. With respect to the sale deed executed by DHR as alleged by JDR inspite of giving sufficient opportunity to the JDR he has not completed his part of work as well as the developments in the schedule property as per the terms and conditions of the compromise petition before Honble arbitrator and the DHR resides outside the karnataka state it is difficult to visit his schedule property repeatedly, therefore, he has executed registered instrument to the third party namely M/s VDB and IDC project LLP but, still the DHR has not handover the possession to the said M/s VDB and IDC project LLP.

17. Besides, the Counsel for the DHR also undertakes to pay some of Rs.7,00,000/- to the JDR which he has given the DHR at the time of JDA. In view of all the above observations the application filed JDR IA.No.6 u/Sec.47 of CPC is hereby rejected. Therefore, I answer this point in the '**Negative**'.

18. <u>POINT No.2:-</u> For the foregoing reasons, I proceed to pass the following:-

<u>O R D E R</u>

I.A.No.6 filed by the JDR under Sec.47 r/w 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 **22nd day of January, 2026).**

NISHARANI A C
Digitally signed by NISHARANI A C
Date: 2026.01.28 11:25:04 +0530

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