

ORDERS

Decree Holder filed I.A No.2 U/o.21 Rule.36 R/w.Sec.151 of CPC, seeking for issue of delivery warrant against Judgment Debtor No.1.

2. In the affidavit accompanying the application, it is stated that the decree holder filed suit for eviction which came to be allowed and against the said judgment, Judgment Debtor No.1 preferred appeal before Hon'ble High Court of Karnataka, which came to be dismissed. As the Judgment passed in Ejectment suit has been affirmed by Hon'ble High Court of Karnataka, the decree holder is entitled for recovery of possession. As such, present application is filed. On the said grounds, the decree holder sought for issue of delivery warrant.

3. The counsel for Judgment Debtor No.2 submits to adopt the objection filed to the main petition as objection to I.A.No.2. In the objection, it is contended that a suit for specific performance has been filed by Judgment Debtor No.2, in which the

property in the present petition is the subject matter, which came to be partly allowed and against the said judgment, Judgment Debtor No.2 preferred an appeal before Hon'ble High Court of Karnataka, wherein the appeal came to be dismissed. Against the judgment passed by Hon'ble High Court of Karnataka, the judgment debtor No.2 preferred Special Leave appeal before Hon'ble Supreme Court of India, wherein stay is granting from dispossessing the judgment debtor No.2 from the suit property. The properties are one and the same and stay has been granted by Hon'ble Apex Court from dispossessing judgment debtor No.2 from the property. As such, the present application is not maintainable and sought for dismissal of application.

4. Heard counsel for decree holder and judgment debtor No.2. Perused the materials on record.

5. On perusal of the materials on record, there appears to be no dispute pertaining to the aspect of pendency of litigation between the parties before this court as well as Hon'ble High Court of

Karnataka. The judgment debtor No.2 also admitted the aspect of passing of Decree in favour of decree holder and also dismissal of appeal by Hon'ble High Court of Karnataka. It is the specific contention of judgment debtor No.2 that, the Hon'ble Apex Court granted stay for dispossessing the judgment debtor No.2 from the property. During the course of argument on I.A.No.2, the counsel for decree holder submitted that judgment debtor No.2 is in possession of petition schedule property. It is also not disputed by the parties that the subject matter of suit for specific performance is the same as that of the present petition. The counsel for decree holder submitted during the arguments that the property mentioned in the present petition is the same as that of property in suit for specific performance and there appears to be no dispute pertaining to the said aspect. It is pertinent to note that decree holder admitted the aspect of possession of judgment debtor No.2 over the petition schedule property. In the prayer of the petition also, decree holder sought to execute the decree against both judgment debtors which aspect

indicate the possession of judgment debtor No.2 over the petition schedule property. The counsel for judgment debtor No.2 furnished the copy of Order passed by Hon'ble Supreme Court of India passed in Special Leave Appeal No.667/2024, wherein the Hon'ble Court granted stay for dispossession of petitioner, who is JDR No 2 herein, until further orders. In the application, the decree holder sought for issue of delivery warrant against the judgment debtor No.1 only. If an order of delivery warrant is issued, then the same has to be executed against judgment debtor No.2, who appears to be in possession of property as per materials on record and as per the submissions made during the arguments. The process, if issued, will be executed against judgment debtor No.2, who is in possession of property and same appears to violate the order passed by Hon'ble Apex Court. There is clear stay against dispossession of judgment debtor No.2 from the petition schedule property and if delivery warrant is issued, then there are possibilities of dispossession of judgment debtor No.2, who is in possession, which will be in the nature of violating

the order passed by Hon'ble Apex Court. The property in the present petition and the one in Special Leave Appeal appears one and the same. The Hon'ble Apex Court granted stay from dispossessing JDR No 2 and issue of delivery warrant might result in dispossession of JDR no 2 which is against the order of stay granted by Hon'ble Apex Court. As such, there exists no valid ground for issue of process as sought in I.A.No.2. In the guise of executing delivery warrant against judgment debtor No.1, there are every possibilities of dispossessing judgment debtor No.2 from petition schedule property. Issue of delivery warrant, if duly executed, will ultimately result in dispossession of JDR no 2 which appears contrary to the order of stay granted by Hon'ble Apex Court. As such, the decree holder not made out valid grounds at this juncture for allowing I.A No.2. On consideration the materials on record and for the above mentioned reasons, this court deems it appropriate to pass the following:

ORDER

I.A No.2 filed by decree holder is rejected.

The decree holder is at liberty to approach this court seeking delivery warrant after disposal of Special Leave Appeal before Hon'ble Supreme Court of India.

Await further orders in Special Leave Appeal No.667/2024.

Call on 15.10.2024.

1st Addl. Judge & ACJM