

KABC170003182022



**IN THE COURT OF LXXXV ADDL. CITY CIVIL &  
SESSIONS JUDGE, AT BENGALURU (CCH-86)**

**THIS THE 18TH DAY OF APRIL 2023.**

**PRESENT:  
SMT. LATHAKUMARI. M,  
M.A, LL.M.,  
LXXXV ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**Ex. No. 45/2022**

**BETWEEN:**

Chawla Interbild Construction  
Company Private Ltd.,  
Having its Regd. Office at  
No.3, Homelands, 55,  
Hill Road, Bandra (West),  
Mumbai - 400 050.

**: DECREE HOLDER**

**(Represented by Sri. R.V. Naik, - Advocate)**

**AND**

M/s. Skyline Construction &  
Housing Private Ltd.,  
No.11, Hayes Road,  
Bangalore 560 025.  
Also at No.206 & 207, 2<sup>nd</sup> Floor,  
Sophia's Choice, 7/28,  
St. Marks Road,  
Bangalore-560 001.

**: JUDGMENT DEBTOR**

**(Represented by Sri. Prathap K - Advocate)**

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**ORDERS ON APPLICATION FILED BY DECREE  
HOLDER UNDER SEC.151 CPC R/W SEC. 21 21  
RULE 466 OF CPC., FOR DEPOSITING OF  
ATTACHED MONEY**

This is an application filed by the Decree Holder seeking to direct the Judgment Debtors Directors Mr.Avinash Prabhu, Managing Director and Mr. Dhiraj Prabhu, Director as well as the Canara Bank, Mudigere Branch and Langford Town Branch to deposit in this court the amounts due to them as per their share holdings, dividends, bonuses etc., and other payments such as Directors Remuneration/Salary etc., due to the Directors, attached vide orders dated 12.08.2022 and 01.02.2023 to an extent of Rs.2,05,11,551.90 being decretal dues, in the schedule companies in the interest of justice and equity. In the schedule of companies annexed to this application, the Decree Holder has mentioned as many as 7 companies.

In support of this application, Mr. Ajay L. Chawla, sworn an affidavit stating that this court pass an ad-interim order of attachment on 12.08.2022 of the share holdings, dividends, bonuses and other payments of Mr.Avinash Prabhu, Managing Director and Mr. Dhiraj Prabhu, the Director. The said order was made absolute by this court by order dated 01.02.2023. The Judgment Debtors challenged the said order before the Hon'ble High Court of Karnataka. After hearing both the parties

Hon'ble High Court granted stay of transfer of shares in Kalmane Coffee Estate. There is no stay of other movables or other aspects of the Attachment Order nor further proceedings but only that the shares shall not be transferred. It is further mentioned that the rest of the attachment order is not stayed nor affected and hence this court can proceed further in the Execution Case. In para-4 of the affidavit, it is further stated that the amount due as per the award together with interest has gone up to Rs.2,55,11,551.90 as on 31.03.2023, the Judgment Debtors have deposited Rs.50,00,000/- in W.P. No. 25308/2022 and therefore the balance due as on 31.03.2023 is Rs.2,05,11,551.90 and this amount is duly recoverable from the Judgment Debtor. It is further stated that by virtue of the attachment order, the Judgment Debtors are bound to deposit their incomes from the schedule companies for satisfaction of the award. On account of the share holdings, the Directors are entitled to receive various payments, such as Directors Remuneration or salaries, dividends and bonuses and other payments out of the income of the schedule companies being dividends, bonuses and other payments. In view of the ad-interim order of this court dated 12.08.2022, the Judgment Debtors i.e., Directors could not avail or draw the said payments due to them from that date and were to be retained in the

bank accounts. Hence, it is necessary for an order to deposit the amount due to them before this court. So that same could be paid to the Decree Holder towards satisfaction of the dues arising out of the award dated 31.07.2014, subject to final orders in the 2 writ petitions. It is further mentioned that, it is necessary to direct the Directors to deposit the amount before this court. So that two Directors do not clandestinely withdraw the same from the banks. An order directing deposit, does not cause any harm to the Directors and on the other hand if it is not ordered, the two Directors may remove the same from and beyond the control and out of the jurisdiction of this court and hence it is necessary to pass an order directing the deposit amount before this court. In para-6 of the affidavit, the Decree Holder pray that this court may pass an order directing the Judgment Debtors Directors Mr. Avinash Prabhu, Managing Director and Mr. Dhiraj Prabhu, Director as well as the Canara Bank, Mudigere branch and Langford town branch, to deposit in the court the amounts due to them as per share holding, dividends, bonuses etc., and other payments such as Directors remuneration/salary etc., in the schedule companies in the interest of justice and equity.

**2.** This Interim Application filed by DHR was resisted by Judgment Debtor by filing its statement of objections. The Judgment Debtor contended that the present application sought for deposit of various amounts before this court as filed by DHR is not maintainable. The Judgment Debtor further mentioned that the prayer sought in the application apart from being prolix, it is an attempt by the Decree Holder to overreach the proceedings in W.P. Nos.25308/2022 and W.P. No. 6936/2023 pending before Hon'ble High Court. Further, mentioned that the said application is not at all maintainable. This court may not enable any party to overreach the proceedings pending before the higher constitutional court. In para-3 of the objection statement, it is further mentioned that in the instant case right from the beginning there has been violation of mandatory provisions. The order dated 02.02.2022, in which this court kept open the aspect of payment of Stamp Duty and Penalty on the Award, and order notice of the petition to the Judgment Debtor. Thus, this court has taken note of the fact that the award in question was not stamped as required under Article 11 in the Schedule to the Karnataka Stamp Act, 197. Action as per Sec. 33 and 34 of the Act ought to have been taken, namely, the award was required to be impounded under Section 33 of the Act and as per Section 34 it

could not have been acted upon. The said inaction has been resulted in perpetuating of passing of orders from time to time in breach of the above said provisions, which will be further referred to hereunder. In para-5 of the statement of objection it is further mentioned that an application u/S 33 and 34 of the Karnataka Stamp Act was filed by the Judgment Debtor. The said application was dismissed by order dated 28.07.2022 by applying the decision of Hon'ble High Court in W.P. No. 20090/2016 disposed of on 28.04.2016 and other rulings passed under the Arbitration Act, 1940. It is further contended that, all the said rulings were totally inapplicable to the facts of the instant case and hence illegality is perpetuated. In para-6 of the statement of objections Judgment Debtor it is mentioned that the point referred to above is noticed by the Hon'ble High Court dated 16.12.2022 in W.. No. 25308/2022 and an interim order was passed staying the proceedings in Ex. No. 45/2022 on a condition that, the petitioner i.e., Judgment Debtor was deposited a sum of Rs. 50 lakhs with the registry within four weeks from 16.02.2022. Further, Hon'ble High Court by its order dated 17.01.2023 extended time for deposit the amount by another two weeks from that day. The Judgment Debtor ought to have been made deposit on or before 31.01.2023. Due to certain constraints, the Judgment

Debtor could not make the deposit on or before 31.01.2023, since the JDR was required to deposit Rs.50 lakhs in a proceeding before the Hon'ble Supreme Court. However, as on 31.01.2023, the JDR could muster Rs.15 lakhs only and by 04.02.2023 the balance amount of Rs.35 lakhs was arranged and deposited in the court on 04.02.2023. On the same day I.A.No.3/2023 was filed in W.P. No. 25308/2022 requesting the Hon'ble Court to accept the deposit made on 04.02.2023. Hon'ble High Court by its order dated 08.02.2023 allowed I.A.No.3/2023 and the time for deposit was extended. Therefore, the interim order of stay of further proceedings in the present execution case granted on 16.12.2022 is deemed to have been continued. In para-9 of the objection statement the JDR submits that, the conduct of the DHR has been to precipitate the matter in the Execution Case in contravention of the order dated 16.12.2022 in W.P. No. 25308/2022. Thus, this court was persuaded to pass an order dated 01.02.2023 making the ad-interim order dated 12.08.2022 in law is in contravention of Section 34 of the Karnataka Stamp Act, since any document, regarding which stamp duty is not paid cannot be acted upon. Secondly, this court after passing the ad-interim order on 12.08.2022 posted the case to 13.09.2022 for filing objections to I.A.No.2. In the normal judicial

process, opportunity filing objections is afforded before passing any order, except in the case of ad-interim ex-parte orders under the provisions of Order 38 Rule 5 CPC or Order 39 Rules 1 and 2 CPC., that too before the defendant appears in the case and hence contended that the normal procedure is not followed in the instant case. It is further contended that on 01.02.2023, this court was pleased to make the order dated 12.08.2022 without taking into consideration the pendency of W.P. No. 25308/2022 and the interim order passed by Hon'ble High Court dated 16.12.2022 and 17.01.2023. The said order tantamount to overreaching the proceedings before the Hon'ble High Court in W.P. No. 25308/2022. Therefore, the JDR filed an application for stay of the said order on 04.02.2023 in W.P. No. 25308/2022. It is further contended that on 02.02.2022 this court went a step further and on oral submissions of the advocate for DHR, invoked the provisions of Order 21 Rule 11 CPC and order is wholly against the principles laid down by the Hon'ble Supreme Court of India in a time tested ruling reported in (1980)2 SCC 360. It is further contended that Hon'ble High Court in a recent decision rendered on 07.03.2023 in W.P. No. 4525/2023 was pleased to hold that, for passing an order of arrest there should be an application under Order 21 Rule 30 CPC and Order 21 Rule 11 CPC cannot

be invoked unless the ingredients of the said provision are fulfilled and order of arrest was set aside by the Hon'ble High Court. Incidentally, the impugned order in W.P. No. 4525/2023 was passed by this court. The Judgment Debtor further mentioned that having regard to the fact that this court continued to pass order at the behest of the DHR, the JDR was constrained to approach the Hon'ble High Court by initially filing an application I.A.No.2/2023 in W.P. No. 25308/2022 on 04.02.2023 for stay of the order dated 02.02.2023 the Hon'ble High Court by an order dated 08.02.2023, 15.02.2023 and 23.02.2023 deferred the arrest warrant. At the behest of the DHR, another order dated 04.03.2023 came to be passed on the memo filed on behalf of the DHR. No opportunity was afforded to the JDR to file objections to the said memo. It is further contended that notwithstanding the order of this court dismissing the application of the JDR dated 28.07.2022 on I.A.No. 1, the order dated 04.03.2023 was in contravention of the provisions of the Sections 34 of the Karnataka Stamp Act, 1957. In this regard, a separate writ petition No. 6936/2023 is filed before the Hon'ble High Court of Karnataka and obtained an ad-interim order dated 12.08.2022. The Hon'ble High Court passed an order connecting with W.P. No. 6936/2023 along with 25308/2022 and made an observation that

in W.P. No. 25308/2022 the executability of the award on the ground that the award is not stamped is assailed. Hon'ble High Court having been seized of the question of the executability of the award in question, this court cannot overreach the said proceedings and passed any orders, interim or final. In para-15 of the statement of objections, the Judgment Debtor further mentioned that Hon'ble Apex Court in the case of M. Anasuya Devi and another vs. M. Manik Reddy and others held that the question whether an award requires stamping and registration is within the ambit of Section 47 of the CPC and not covered by Sec. 34 of the Act. The Judgment Debtor extracted said paragraph in para-15 of its statement of objections. Further, at para-16 it is mentioned that this court is required to examine the propriety and tenability of the present application filed by DHR on 10.04.2023, which is numbered as I.A. No.5. Having regard to the fact that, the very executability of the award for want of payment of stamp duty and penalty as originally noticed by this court in its order dated 02.02.2022 is pending consideration before this court and having regard to the provisions of Sec.34 of the Karnataka Stamp Act and the pendency of the two writ petitions before the Hon'ble High Court, the application is liable to be dismissed. It is further submitted that if the present

application is considered and allowed, it may tantamount to overreaching the proceedings in the two pending writ petitions and may result in rendering the writ petitions infructuous and further leading to multiplicity of proceedings, driving the JDR again to the Hon'ble High Court with a fresh grievance. The underlying principle of Article 144 of the Constitution of India which reads as under applies to the courts which are within the jurisdiction of this Hon'ble High Court as per the ruling of the Division Bench of the Hon'ble High Court reported in ILR 1986 Kar 2356. Further, JDR mentioned that principles laid down in the said decision and contended that all authorities civil and judicial in the territory of India shall act in aid of the Hon'ble Apex Court/ in para-17 the Judgment Debtor has mentioned that on receipt of the copy of the application in I.A. No.5 on 10.04.2023, the Judgment Debtor has filed an application on 11.04.2023 in W.P. No. 25308/2022 c/w W.P. No. 6936/2023 on 11.04.2023 for stay of the further proceedings in the present Execution Case by producing copy of I.A.No.5 with the supporting affidavit and copy of the proceedings of this court dated 10.04.2023 in the present case. The said application is moved for posting and the said application is likely to be posted on 18.04.2023. This court may also be consider the said aspect before coming to the

conclusion as to the propriety of passing any order which militates against the provisions of Section 34 of the Karnataka Stamp Act and which militates against pending proceedings before Hon'ble High Court. The Judgment Debtor further mentioned that the contents of the affidavit in support of I.A.No.5 are such that, the DHR is attempting to persuade this Hon'ble Court to pass orders in contravention of the provisions of Sec. 34 of the Karnataka Stamp Act. There is no merit nor bonafides in the DHR filing the application under reply and same is liable to be set aside. Hence, prays to dismiss this interim application No. 5 filed by DHR with exemplary costs.

3. The learned counsel for JDR canvassed before this court that order passed by this court on I.A.No.1 and various other applications are nothing to do with the interim application in question. Further, it was mentioned that Judgment Debtor herein preferred Com.A.S. No. 116/2014 challenging the impugned award passed by learned arbitrator in A.C. No.13/2013 and said Arbitration Suit came to be dismissed with cost on 29.11.2021. In spite of initiating this Execution Proceedings and also in spite of duty casted on the court to dispose of Execution Proceedings within six months, DHR is not able to enjoy the fruits of the decree due to

unnecessary interference caused by JDR just to evade payment due to the Decree Holder. On the other hand, learned counsel for Judgment Debtor canvassed that since JDR has already preferred Writ Petitions No.25308/2022 c/w W.P. No. 6936/2023, matter being seized before Hon'ble High Court, it is just and appropriate that this court refrains from passing any orders at the behest of the DHR. Further, learned counsel for JDR also canvassed during his arguments that, DHR has filed application without mentioning the proper provision and thereby application filed by DHR is not at all maintainable and the proper provisions like Order 21 Rule 46 (A) to (H) and (I) being not initiated before this court question of considering such application does not arise. However, learned counsel for JDR concedes that under Sec. 151 of CPC., this court has powers to consider such application and pass appropriate orders and also submitted that mentioning of wrong provision or unapplicable provisions is not a ground to reject such application.

4. With the above submissions of respective counsels, I have carefully scrutinized the entire records placed before me also perused Annexure-1 to 7 produced by JDR and the principles laid down by Hon'ble Apex Court in the citation AIR 2021 SC 2161.

5. Now the points that arise for my consideration are:-

1) Whether the Decree Holder has made out a ground to direct the Judgment Debtors Directors, as well as Canara Bank Mudigere Branch and Langford Town branch to deposit in this court the amounts due to them as per their share holdings, dividends, bonuses, other payments like salary etc.,?

2) What Order?

6. My answers to the above points are as under:

**Point No.1** :- Partly in the Affirmative

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

### **REASONS**

**7. Point No.1** :- It is not in dispute that the judgment delivered in Com.A.S. No. 116/2014 in favour of Decree Holder on 29.11.2021 has become final as it was not challenged before Hon'ble High Court of Karnataka. It is also not in dispute that in pursuance of the award passed by the learned arbitrator in A.C. No.13/2013 dated 31.07.2014 which was confirmed in Com.A.S. No. 116/2014, the Decree Holder initiated above Execution

Proceedings claiming decretal amount of Rs.2,34,41,801.84 from the Judgment Debtors on 27.01.2022. As the award had already been made in favour of the DHR, this court need not go into the facts of the case, however it will be worth noting that by virtue of the award, Decree Holder is entitle to the decretal amount as claimed in this Execution Petition. On filing of this Execution Petition on 28.01.2022 by Decree Holder, this court issued notice to the Judgment Debtor by keeping open the aspect of payment of stamp duty and penalty. Notice issued to JDR No.1 and 2 returned as 'no such address'. However, Sri. P.K., learned advocate filed vakalath for JDRs., on 28.03.2022 and sought for time to file objections and later, on next date of hearing filed application under Sec. 33 and 34 of the Karnataka Stamp Act. By order dated 28.07.2022, this court dismissed the said application and posted the matter for steps. On 11.08.2022, learned counsel for JDR., sought for time to file objections to the Execution Petition. On the same day, the counsel for DHR., filed application under Order 21 Rule 46 r/w Sec. 151 CPC., On 12.08.2022, an interim order passed which was later made absolute on 01.02.2023. No doubt, the Judgment Debtor has preferred writ petition before Hon'ble High Court challenging the said order and also orders passed

under I.A.No.1. Whether Hon'ble High Court has stayed the Execution proceedings in the said writ petitions filed by JDR., is a point to be considered at this stage. In this regard, it is necessary to go through the documents produced by JDR himself which is the online case list status of Hon'ble High Court of Karnataka in W.P. No. 25308/2022. According to this case list status, on 23.02.2023, Hon'ble High Court passed the following order "It is clarified that arrest warrant if sought to be enforced must be only after proceeding against the properties of Judgment Debtor". Further, Judgment Debtor himself has produced another memo along with case status of Hon'ble High Court of Karnataka in W.P. No. 6936/2022 filed by JDR., In this writ petition, Hon'ble High Court of Karnataka by its order dated 30.03.2023 held as follows: -

"The petitioner has already filed a writ petition, W.P. No.25308/2022, assailing the executability of the award on the ground that the award is not stamped.

Therefore this writ petition has to be decided along with W.P. No. 25308/2022. After hearing Sri Ashok B Patil, learned counsel for the petitioner and Sri. R.V. Naik learned counsel for caveator/respondent the following interim order is passed.

The attachment of the shares of the petitioner in the Kalmane Coffee Estate shall take place, but transfer of shares shall not take place till

both the writ petitions are decided on merits.  
List this petition along with W.P. No.  
25308/2022 for final disposal soon after the  
courts re-open after Summer Vacation, 2023.”

As per this order of Hon'ble High Court of Karnataka, it is not in dispute that the Hon'ble High Court has granted stay of transfer of shares in Kalmane Coffee Estate and there is absolutely no stay of other movables or other aspects of the attachment order passed by this court. While conducting a case, a lawyer has a duty to be fair not only to his client but also to the court and to the opponent party. The Decree Holder herein having carried out certain constructions of residential blocks to the Judgment Debtor herein in pursuance of an agreement dated 20.07.2006, though entitle for the amount mentioned supra i.e., Rs.2,34,41,801.84 not able to recover any amount from JDR., till today i.e., even after lapse of more than a decade. In relation to the difficulties faced by the Decree Holder in execution of the decree in 1872 Hon'ble Privy Council in the case of the General Manager of the Raj Durbanga had observed that “The difficulties of a litigant in India begin when he had obtained a decree”. In the case of Kaur Jang Bahadur vs. Bank of Upper India Limited, Lucknow Hon'ble Apex Court observed that “Courts in India have to be careful

to see that process of the court and law of procedure are not abused by the Judgment Debtors in such a way as to make courts of law instrumental in defrauding creditors, who have obtained decrees in accordance with their rights". Hon'ble Apex Court in Shub Karan Bubna @ Shub Karan Prasad Bubna vs. Sita Saran Bubna and others (2009)9 SCC 689 at para-27 observed as under: -

"In the present system, when preliminary decree for partition is passed, there is no guarantee that the plaintiff will see the fruits of the decree. The proverbial observation by the Privy Council is that the difficulties of a litigant begin when he obtains a decree. It is necessary to remember that success in a suit means nothing to a party unless he gets the relief. Therefore, to be really meaningful and efficient, the scheme of the Code should enable a party not only to get a decree quickly, but also to get the relief quickly. This requires a conceptual change regarding civil litigation, so that the emphasis is not only on disposal of suits, but also on securing relief to the litigant."

When a decree has been obtained by a party he should not be deprived of the fruits of the decree. The decree must be allowed to be executed. Mere quoting of wrong provision does not disentitles the Decree Holder from

the reliefs claimed. The learned counsel for JDR as mentioned above also concedes that, non-mentioning of correct provision cannot be a ground to reject the application. It is not in dispute that this court has issued prohibitory order against salary, dividends etc., of the Managing Director and Directors of the Companies i.e., the JDRs., herein. As per the provisions of Order 21 Rule 46 (1)(A) this court can issue notice to the concerned banks/garnishee who are holding the amounts of JDR calling upon them to pay into court, the amount due from them to the Judgment Debtor so as to satisfy the decree. The term 'Execution' means the process of enforcing or giving effect to the decree or judgment of the court, by compelling the Judgment Debtor to carry out the mandate of the decree or order to enable the Decree holder to recover the amount/thing granted to him by judgment. Once a decree or judgment is passed by the court, it is the obligation of the person against whom the judgment is passed (Judgment Debtor) to give effect to the decree so as to enable the Decree Holder to enjoy the benefits of the judgment. It is not the case of Judgment Debtors that they are not the Managing Director and Directors of various companies mentioned in schedule of companies to this petition. Since the stay order of Hon'ble High Court is in respect of only one of the

company i.e., Kalmane Coffee Estate, the Judgment Debtors are owning 6 other companies apart from said Kalmane Coffee Estate. It is also not in dispute that they have their amounts due to them by way of their dividends, bonuses, remuneration etc., against such companies. Hence, if Judgment Debtors Directors as well as their bank authorities are directed to deposit these amounts due to them before this court, no hardship will be caused to Judgment Debtors as long as they cannot evade such payments which is due by them to the Decree Holder herein. If the Decree Holder is unable to enjoy the fruits of the decree by getting the decree executed, the entire effort of successful litigant would be in vein. Further, as rightly relied upon by the Decree Holder in the citation AIR 2021 SC 2161 Hon'ble Apex Court observed that executing court must dispose of execution proceedings within 6 months from the date of filing. Further Hon'ble Apex Court observed that "The court must in appropriate cases where it finds the objections or resistance or claim to be frivolous or malafide, resort to sub-rule 2 of Rule 98 of Order 21 as well as grant compensatory cost in accordance with Sec. 35A". Relying upon these principles and also considering that there is no stay of hands of this court in considering above application, this court opines that it is necessary to direct the

Managing Director and Director of Judgment Debtor and also their concerned bank authorities as mentioned above, to deposit the amount of JDRs., available with them to an extent of Rs.2,05,11,551.90 in respect of 6 other companies mentioned in this application schedule except Kalmane Coffee Estate, Kalmane, Niduvale Post, Mudigere Post, Chikkamagaluru District. Accordingly, I answer this Point No.1 partly in "Affirmative".

**8. Point No.2 :** - Since it is not in dispute that by virtue of judgment passed in Com. A.S. No.116/2014, the award passed in A.C. No.13/2013 dated 31.07.2014 has attained its finality and Judgment Debtors are due of Execution Petition amount and also in view of my answer to Point No.1, I proceed to pass the following

**ORDER**

***The application filed by the Decree Holder under Order 21 Rule 46 r/w Sec. 151 CPC., is partly allowed with cost.***

***The Judgment Debtors Directors Mr.Avinash Prabhu, Managing Director and Mr. Dhiraj Prabhu, Director, as well as the Canara Bank, Mudigere Branch***

***and Langford Town Branch are directed to deposit in this court the amounts due to them as per their dividends, bonuses etc., and other payments such as Directors Remuneration/Salary etc., due to the Directors, attached vide orders dated 12.08.2022 and 01.02.2023 to an extent of Rs.2,05,11,551.90 being decretal dues, in the schedule companies except Kalmane Coffee Estate, Kalmane, Niduvale Post, Mudigere Taluk, Chikkamagaluru District.***

(Dictated to the Judgment Writer directly on the computer, transcribed by him, corrected and then pronounced by me in open Court on this the **18<sup>th</sup> day of April, 2023**).

**(LATHAKUMARI.M),  
LXXXV Addl.City Civil & Sessions Judge,  
Bengaluru.**