

ORDERS ON OBJECTION FILED BY THE JDR

The decree holder has filed the present petition seeking issuance of delivery warrant against the judgment debtor, contending that the Hon'ble High court of Karnataka in RSA No. 6029/2013 confirmed the judgment passed by this court. Further contended that this court has passed the judgment directing the defendant / judgment debtor to deliver the possession of suit property within 4 months from the date of the passing the judgment. Further contended that the judgment debtor have not delivered the possession of the suit property within the period stipulated by this court.

2. The judgment debtor have filed the objection contending that the present petition is prematured as the time granted by this court to enforce decree is still in existence, if it is considered from the date of order passed in RSA. Further contended that the decree cannot be enforceable unless and until the period granted by this court is lapsed. The decree holder without waiting for 4 months time has filed the present petition. Further contended that the decree holder ought to have filed the present petition after the period of 4 months after passing of the order in RSA, then only the decree holder is having right to recover the

possession of the suit property in accordance with law. Further contended that the judgment debtor has preferred SLP before Hon'ble Supreme Court of India against the order passed by the Hon'ble High Court in RSA No. 6029/2013 and the said appeal is pending for consideration before Hon'ble Supreme Court of India. Further contended that the decree holder is wrongly mentioned the name of the judgment debtor No. 1(b) as Nikita and her correct name is Nisha. Further contended that, no order shall be passed against the person whose name is wrongly mentioned in the execution petition. Hence prays for dismissal of the petition.

3. Heard the arguments.

4. The following points would arise for my consideration:

1. Whether the Jdrs have made out grounds to reject the petition?

2. What order?

5. My answer to above points are as under:

Point No.1: In the Negative.

Point No.4: As per order for the following:

REASONS

6. Points No.1 :- It is pertinent to note that, it is not in dispute that O.S.No.165/2008 filed by the plaintiff against the deceased Arjuna, the husband and the father of the Jdrs was decreed, wherein, the

defendant was directed to handover the actual vacant possession of the suit property within a period of 4 months from the date of passing of the order. The said Judgment was challenged by filing Appeal bearing R.A.No.3/2012, wherein, the judgment passed in O.S.No.165/2008 was set-aside. Aggrieved by the Judgment of the Appellate Court, the DHr has preferred R.S.A.No.6029-2013, wherein the Hon'ble High court has allowed the appeal and confirmed the judgment and decree passed by this court in O.S.No.165/2008. It is pertinent to note that, the Hon'ble High Court of Karnataka. In the said order , has not given any further time for delivery of possession by the JDRs to the DHr. It is the contention of the JDRs that, the execution petition is premature. The DHr can file the execution petition only after lapse of 4 months from the date of the Judgment passed by the Hon'ble High Court of katakana. Further argued that Appeal preferred by the DHr is a continuation of the suit. Four months time to vacate the suit premises has to be calculated from the date of the Judgment passed by the Hon'ble High Court of Karnataka. In this regard relied on the decision of the Hon'ble supreme court reported in **2004(1) Supreme COURT 1051 and 2015 4 ADJ 104**. On the other hand, the DHr counsel has argued that the Hon'ble High court has not granted any further time for vacating the suit schedule property. The four months period fixed by this court has already lapsed. The

JDRs are in possession of the suit property more than 12 years, from the date of the judgment passed by this court. When, the Hon'ble High court has not given any time for delivery of possession to the JDRs, this court cannot give any further time. This court has to execute the order of the Hon'ble High court. Further relied on the decision of the Hon'ble Supreme Court reported in **(2014) 2 SCC 465** and contended that in the said decision it is held that the executing court must execute the decree as it is. It cannot go beyond the decree and has no jurisdiction to modify the same. It is pertinent to note that the Hon'ble High court in its judgment has not mentioned any period to the Jdrs to vacate the suit schedule property. The time period given by this court has already expired. Now, issue in the present case is whether, the Jdrs are having four months time period to vacate the suit property from the date of the Judgment of the Hon'ble High Court of Karnataka. As stated supra, the Hon'ble High Court of Karnataka has not granted any further time to the JDRs for vacating the suit property. Such being the case, this court cannot assume that the JDRs are having four months period for vacating the suit schedule property from the date of the Judgment and the Dhr have to file the execution petition after expiry of the four months period. It is pertinent to note that the decision relied on by the Jdr counsel is pertaining to the expiry of the limitation period for filing of

the execution petition and commencement of the limitation period. The decision relied on by the Jdrs is not applicable to the present facts of the case. Hence, the contention of the Jdrs that the present execution petition is premature is not acceptable.

7. The JDRs contend that, they have preferred appeal before the Hon'ble supreme court and further relied on the decision of the Hon'ble Supreme Court reported in **2004(1) Supreme 1051** and argued in the said decision it is held that, once an appeal preferred before the Hon'ble supreme court, the Judgment of the High court or the tribunal is in Jeopardy and grant of stay of operation of the Judgment may not be of much relevance. In order to show that, JDRs have preferred appeal before the Hon'ble supreme court has produced the copy to show that diary number has been given. On perusal of the documents produced by the JDRs it appears that, the JDRs have preferred appeal on 11.03.2024. On the other hand, the DHr counsel relied on the decision of the Hon'ble supreme court reported **(2005) 1 SCC 705** and argued that the Hon'ble High court in the said case has held that, mere filing of the appeal does not operate as stay on the decree or order appealed against nor on the proceedings in the court below. It is pertinent to note that in the decision relied on by the JDRs, the Hon'ble supreme court has held that, the question of grant of stay of operation of the judgment may

not be of much relevance once the supreme court grants special leave and decides to hear on the merits. In the instant case, it is not the case of the JDRs that the Hon'ble supreme court has entertained the appeal and granted special leave and decides to hear the matter on merits. Hence, the decision relied on by the JDRs is not applicable to the present facts of the case. Further it is pertinent to note that the Hon'ble supreme court in its decision reported in **(2005) 1 supreme Court** has held that mere preferring of an appeal does not operate as stay on the decree or order appealed against not on the proceedings in the court below. As stated supra, in the instant case, the Jdrs herein failed show that the Hon'ble Supreme court has granted special leave and decides to hear on merits or there is a stay of the order passed by the Hon'ble High court. On contrary, it appears that the JDRs have preferred appeal only on 11-3-2024 that to after receipt of the notice of the present petition by the Jdrs. Hence, when there is no stay by the Hon'ble supreme court to the Judgment of the Hon'ble High court passed in O.S.No6093/2013 or an order granting special leave and deciding to hear on merits, the JDRs cannot contend that this court cannot issue delivery warrant claiming the appeal is pending before the Hon'ble supreme court.

8. The next contention of the JDRs that, the name of the JDR no.1(b) is wrongly mentioned by the DHR. According to the JDRs the

name of the Jdr no.1(b) is wrongly shown as Nikita instead of Nisha. It is pertinent to note that the JDR No.1(b) appeared in R.S.A before the Hon'ble High court through counsel. During the pendency of the appeal, no objection was raised contending that the name of the JDR No.1(b) is wrongly mentioned. Further more it is not the contention of the JDR No.(b) that, she has not contested in the appeal. Even in the present petition also, she appeared before the court through counsel. Such being the case, on the ground that the name of JDR No.1(b) is wrongly mentioned is not a ground to reject the petition. Hence, I am of the opinion that the JDRs have not made out grounds to reject the petition. Hence, I answer the **Point no.1 in the Negative.**

9. Point No.2: In view of the above discussion, I proceed to pass the following:-

: O R D E R :

The objections to the petition filed by the JDRs is hereby rejected.

***Issue delivery warrant if steps taken
R/by 26-4-2024.***

**(Basavaraja Thulasappa. Nayaka)
II Addl. Civil Judge & JMFC
Belagavi.**