

KABG300001032025



**IN THE COURT OF SENIOR CIVIL JUDGE,
BAILHONGAL, AT: BAILHONGAL**

PRESENT:

**Shri. Ravi Babu Chawan,
B.A. LL.B.,
Senior Civil Judge, Bailhongal.**

E.P. No.25/2025

Dated this the 21st Day of January 2026

Shri. Mahendra Raosaheb Desai,
Age: Major, Occ: Agriculture,
R/o: Nehru Nagar, Alnavar,
Tq & Dist: Dharwad.

.....Decree Holder

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

-Vs.-

1) The LAO and Asst. Commissioner,
Bailhongal, Dist: Belagavi.

2) The Chief Executive Officer,
Zilla Panchayat, Belagavi.

.....Judgment-Debtors

(By Learnd A.G.P., for Jdr.1)
(By Sri. M.M.K., Advocate for Jdr.2)

PARTIES TO IA No.II

The CEO, Zilla Panchanat
Belagavi

.....Applicants/Judgment Debtor No.2

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

V/s.

Shri. Mahendra R Desai

.....Opponent/Decree Holder

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

ORDER ON IA No.II

The Judgment debtor No.2 has filed the present application under Order XXI Rule 26 R/w Section 151 of C.P.C., seeking stay of further execution proceedings till disposal of Misc. Appeal No.58/2025 pending on the file of the Hon'ble 1st Addl. District and Session Judge, Belagavi, challenging the judgment and award passed in LAC No.51/2009 dated 22-10-2024.

2. The case of the appellant/Jdr No.2 as set out in the affidavit filed by the Executive Officer, Taluk Panchayat Bailhongal, is that he is the Litigation Conducting Officer and is acquainted with facts of the

case. It is contended that the judgment and award under execution is the subject matter of challenge in Misc. Appeal No.58/2025 and that an application under Order 41 Rule 5 of CPC seeking stay is also filed therein.

3. It is further contended that the Decree holder has already proceeded with execution by attachment of movables and that if execution is not stayed, the very purpose of filing the appeal would be defeated, causing irreparable hardship to the JDR. Hence, it is prayed for allowing the application.

4. On the other hand, the Decree Holder has filed detailed statement of objections denying the averments made in the application and affidavit. It is contended that the affidavit is sworn by a person having a no authority to represent Jdr No.2 and that there is no material to show that the Executive Officer is authorized to swear an affidavit on behalf of the Zilla Panchayat. It is further contended that mere pendency of an appeal does not operate as a stay of execution and that no stay has been granted by Appellate Court. Reliance is placed on the decisions of the Hon'ble Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd.* (2005) 1 SCC 705; *Bimal Kumar V. Shakuntala Debi*

(2012) 3 SCC 548; Raghavendra Swamy Mutt v. Uttardi Mutt (2016) 11 SCC 235; and Sanjiv Kumar Singh v. The State of Bihar. 2023 LiveLaw (SC) 63. It is also contended that Order XXI Rule 26 of CPC is inapplicable as the decree is not transfer decree and that once the appeal is already filed, only the Appellate Court as jurisdiction to grant stay in this regard reliance is also placed on the judgment of the Hon'ble Kerala High Court in "Syamala v. Thapodhanan", 2020 SCC OnLine Ker 8401. Therefore, the Dhr in view of the above stated facts and circumstances and the legal position has prayed to reject the application with exemplary cost of Rs.1,00,000/-.

5. Heard the learned counsel appearing for both sides and perused the material available on record.

6. The points that arises for consideration is:

1) Whether the Judgment Debtor No.2 has made out grounds to stay the execution proceedings under Order XXI Rule 26 R/w Section 151 of CPC ?

2) What Order ?

7. My finding to the above points are as under:

Point No.1: In the Negative

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

REASONS:

8. **Point No.1:-** It is not in dispute that the judgment and award passed in LAC No.51/2009 dated 22-10-2024 is under execution in the present proceedings. It is also not in dispute that Misc. Appeal No.58/2025 filed by the Jdrs against the judgment and award is pending consideration before the Appellate Court Hon'ble 1st Addl. District and Session Judge, Belagavi, and that no order of stay has been granted so far.

9. Order XXI Rule 26 of CPC empowers the executing Court to stay execution only in respect of a transferred decree and that too for a limited period to enable the Judgment Debtor to apply to the Court which passed the decree or to the Appellate Court for appropriate orders. In the present case, the decree under execution is not a transferred decree. Therefore, prima facie, order XXI Rule 26 of CPC has no application. Even otherwise, it is a settled position of law that mere pendency of an appeal does not operate as a stay of execution of the decree. Therefore, an

appeal does not automatically stay the execution unless there is a specific order of stay granted by the Appellate Court. The Hon'ble Supreme Court in *Atma Ram Properties (P) Ltd. v. Federal Motors (P) Ltd. (Supra)*, *Bimal Kumar. (Supra)*, *Raghavendra Swamy Mutt. (Supra)*, had categorically held that in the absence of a stay order, the Decree Holder is entitled to proceed with execution. The same principle has been reiterated in *Sanjiv Kumar Singh (Supra)*.

10. In the present case the appeal is admittedly filed with a delay and the Appellate Court has only issued notice on the application for condonation of delay and on the stay application. No interim order staying execution has been granted. Therefore, the Decree Holder's right to proceed with execution remains unaffected. The contention of the Jdr No.2 that the execution should be stayed to avoid hardship cannot be accepted in the absence of a statutory provisions or an order of stay from the competent Appellate Court. The executing Court cannot sit in appeal over the decree nor can it grant a stay when the appeal is already filed and is pending consideration, as held in "*Syamala v. Thapodhanan (Supra)*".

11. In view of the above settled legal position, this Court is of the considered opinion that the application filed by JDr No.2 is devoid of merits. The applicant / Jdr No.2 has failed to make out any exceptional circumstances warranting exercise of inherent powers under Section 151 of CPC to stay the execution proceedings. Accordingly, the point No.1 is answered in the Negative.

12. **Point No.2:-** In view of the above findings and discussion made on point No.1, this Court deems it fit to pass the following:

ORDER

IA No.II filed by the Judgment Debtor No.2 under Order XXI Rule 26 R/w Section 151 of CPC, seeking in stay of execution proceedings is hereby dismissed.

In the circumstance of the case, there shall be no order as to cost.

(Dictated to the stenographer, transcribed and computerized by him, then corrected by me and pronounced in the open Court on this that 21st Day of January 2026)

(Ravi Babu Chawan)
Senior Civil Judge, Bailhongal.

