

In the Court of Smt. KALPANA M. KULKARNI  
DISTRICT AND SESSIONS JUDGE BAGALKOT

Case No.: EX / 308 / 2019 CNR Number: KABK010037632019

Sadashiva S Kembavi Vs The Management of Sri. Basaveshwara Veerashiava Vidyavardhak  
Sangh Rep by Chairman  
SHANMUKHSA KRISHNASA MAGAJI Advocate / K.S.DESHAPANDE, Advocate

ORDER ON I.A.I DATED 24.10.2019

Heard the advocate for D.Hr and advocate for J.Dr. No.2.

2. Perused the records. In the opinion of this Court, it is proper to note some of chronological facts in relation to earlier proceedings of this case which may help the court to appreciate the submissions of both parties.

- a) In the year 2015, the appeal in EAT No.4/2015 is filed before this Court.
- b) This court has passed considered order on merits in EAT No.4/2015 on 19.6.2019 as below:

*“The appeal filed by the appellant under S.94(1) of the Karnataka Education Act, 1983 is hereby partly allowed.*

*The order of dismissal passed by the first respondent bearing Ref. No.BVVS/15/16/546 dated 30.4.2015 and the relieving order passed by respondent No.2 bearing No.BEC/BGK/EST/2015-16 dated 5.5.2015 is hereby set aside.*

*The respondent No.1 and 2 are directed to reinstate the appellant into service with all consequential benefits. The appellant is not entitled for 50% of back salary and one immediate annual increment with cumulative effect is ordered to be withheld.”*

- c) Aggrieved by the judgment and award, J.Dr No.1 and 2 have preferred WP No.112521-112522/2019 before the Hon'ble High Court of Karnataka, Dharwad Bench.
- d) On 3.9.2019 as per the order of Hon'ble High Court of Karnataka, Dharwad Bench, prayer for grant of interim relief of stay of execution and operation of judgment and award passed by this court on 19.6.2019 came to be rejected.

- e) On 9.9.2019 the D.Hr has filed the present execution petition before this Court.
- f) Aggrieved by the said order, the J.Drs have preferred Writ Appeal Nos. 100519-520/2019 (S-RES) before the Hon'ble High Court of Karnataka, Dharwad Bench.
- g) On 19.9.2019 said writ appeals came to be dismissed.
- h) On 24.10.2019, the applicant/D.Hr. has filed I.A.I under Order XXI Rule 37 of Code of Civil Procedure to issue arrest warrant against the Chairman of Basaveshwar Vidya Vardhak Sangh, Bagalkot and detain in civil custody till the complying of order passed in EAT No.4/2015 in the interest of justice.
- i) On 18.11.2019 being aggrieved by dismissal of Writ Appeal Nos. 100519-520/2019, the J.Dr No.1 and 2 have preferred Special Leave to Appeal Nos.3393-3394/2020 before the Hon'ble Supreme Court of India.
- j) On 7.12.2019 the J.Dr. No.1 and 2 have filed objections to I.A. No.I before this Court.
- k) On 8.1.2020 this Court has passed the orders on I.A.I, wherein this Court has fixed the matter for enquiry on I.A.I in terms of Order XXI Rule 41 of Code of Civil Procedure and accordingly, the matter is adjourned to 15.2.2020.
- l) On 15.2.2020 the counsel for D.Hr filed P.F., list of movables and memo with documents and prayed for issue of attachment warrant of movables. On the same day, the counsel for J.Dr. filed memo and produced the copy of order of the Hon'ble Supreme Court in Special Leave to Appeal (C) Nos.3393-3394/2020 dated 10.2.2020.
- m) On 10.2.2020 the Hon'ble Supreme Court of India has passed interim order in Special Leave to Appeal (C) Nos.3393-3394/2020 to the effect as below:

*“Learned senior counsel for the petitioners however submits that re-joining of the respondent No.1 in an institution against which the respondent has carried out a tirade as reflected on page No.177, in the interregnum period is not conducive for the institution. The petitioners are however willing to pay all the dues in terms of the impugned order and continue to pay the respondent amounts in terms of the said orders but would not take work from him.*

*Needful be done within four weeks.*

*Subject to the aforesaid, let notice issue to the respondents limited to the aforesaid aspects.*

*If the amounts are deposited and be paid, the respondent shall not join the petitioner-institute.”*

- m) On 15.2.2020, this court heard the arguments of both sides and fixed the matter for orders on 17.2.2020.
- n) On 17.2.2020, this Court has passed the order to the effect that in view of order passed by Hon'ble Supreme Court noted above, as because the J.Dr. No.2 has time to pay the amount due to D.Hr, hence, in the opinion of the court in the interregnum period, the prayer of D.Hr to issue attachment of movables cannot be accepted and matter is adjourned to 10.3.2010.
- o) On 7.3.2020, the matter is advanced at the instance of advocate for J.Dr No.2 and the counsel for J.Dr No.2 filed memo and deposited amount of Rs.3,94,555/- through D.D. dated 6.3.2020. Accordingly, R.O. is issued by the office of this Court.
- p) On 7.3.2020, advocate for J.Dr No.2 has filed memo stating that the J.Dr No.2 has deposited 15% of the award amount and balance 85% is payable by the Government/J.Dr. No.1.
- q) On 10.3.2020, the counsel for D.Hr filed objections to memo filed by J.Dr No.2 dated 7.3.2020 and also filed another memo to issue arrest warrant and also produced some documents with citations.
- r) On 10.3.2020 the court heard the arguments of counsel of D.Hr and

adjourned the matter for hearing arguments of counsel of J.Drs to 19.3.2020.

- s) On 19.3.2020 the matter came to be adjourned to hear the counsel for J.Drs to 27.3.2020.
- t) In view of notification of Hon'ble High Court of Karnataka, the court is closed from 24.3.2020 to 1.6.2020 towards spread of Covid-19. Accordingly, the matter is being adjourned.
- u) It is placed on record that the learned predecessor-in-office is transferred and the present Presiding Officer has taken charge on 11.5.2020.
- v) On 1.6.2020 as per the SOP issued by the Hon'ble High Court of Karnataka dated 30.5.2020, the court is reopened for limited functioning.
- w) On 4.6.2020/27.5.2020, the advocate for D.Hr filed advancement application through physical filing submitting to take up the matter on board as D.Hr is willing to get an urgent order from this Court.
- x) On 11.6.2020 with due notice to both side, this court has taken up the matter on board in the open court.
- y) On 11.6.2020/27.5.2020 the D.Hr has filed application under S.151 of Code of Civil Procedure at I.A.II seeking payment of deposited amount in this case. On that day itself, the counsel for D.Hr pressed I.A.I dated 24.10.2019 and submitted that D.Hr is seeking orders on I.A.I on merits and submitted arguments and accordingly, the matter is adjourned to 12.6.2020 for hearing.
- z) On 12.6.2020 the counsel for J.Dr. No.2 submitted that already this court has passed orders on I.A.I on 8.1.2020 and the matter is fixed for enquiry on I.A.I in terms of Order XXI Rule 41 of Code of Civil Procedure.

3. In view of submissions, now the matter is fixed for orders on I.A.I. In the background of these earlier proceedings of parties in this case, now the

submissions made before this court on 11.6.2020 are to be appreciated in order to pass orders on I.A.I on merits.

4. During the course of arguments, learned advocate for D.Hr has submitted that D.Hr is pressing for orders on I.A.I, However, during the course of arguments, the learned advocate for D.Hr relied on the order passed by the Hon'ble Supreme Court noted above and also referred Order XXI Rule 41 of Code of Civil Procedure and submitted that as because the J.Dr No.2 has disobeyed the orders, D.Hr is seeking issue of arrest warrant against the Chairman of J.Dr. No.2. In support of said submissions, the learned Advocate for D.Hr has placed the documents and citations produced by D.Hr dated 10.3.2020. On the other hand, the learned counsel for J.Dr. No.2 has submitted that already this court has passed orders on I.A.I on 8.1.2020.

At the cost of repetition, it is placed on record that in view of above said proceedings and submissions on behalf of both sides, today this case is posted for orders on I.A.I noted above.

5. At this juncture, it is proper to make note of Order XXI Rule 41 of Code of Civil Procedure:

- (1) Where a decree is for the payment of money the decree-holder may apply to the Court for an order that-
  - (a) the judgment-debtor, or
  - (b) where the judgment-debtor is a corporation, any officer thereof, or
  - (c) any other person, be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment-

debtor, or officer or other person, and for the production of any books or documents.

- (2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.
- (3) In case of disobedience of any order made under sub-rule (2), the Court making the order, or any Court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three months unless before the expiry of such term the Court directs his release.

It is kept in mind that as per the order of this Court dated 8.1.2020, the matter is fixed for enquiry on I.A.I under Order XXI Rule 41 of Code of Civil Procedure, which is relating to attachment of property. In the humble opinion of this Court, the reading of this provision of law is to the effect that in case there is disobedience of any order made under Sub Rule (2) of the said order, then the court may direct the person disobeying the order be detained in Civil prison for a term not exceeding three months.

6. It is placed on record that on 15.2.2020, the advocate for D.Hr filed list of movables and prayed for issue of attachment of movables. In the humble opinion of this Court, as this Court already has passed the orders on I.A.I on 8.1.2020 and fixed the matter for enquiry, in view of Order XXI Rule 41 of Code of Civil Procedure noted above, enquiry under Order XXI Rule 41(2) of Code of Civil Procedure is contemplated and parties are at liberty to comply the requirement of Order XXI Rule 41(1) or Order XXI Rule 41(2) of Code of Civil Procedure or both.

7. It is noted that in view of order of this court dated 8.1.2020, the records are not to the effect that enquiry as contemplated under Order XXI Rule 41 of Code

of Civil Procedure is completed and it is noted that in that regard memo filed by the advocate for D.Hr dated 15.2.2020 is kept pending for hearing. Under these circumstances, unless orders under Order XXI Rule 41(2) of Code of Civil Procedure are passed, then the question of passing of order under Order XXI Rule 41(3) of Code of Civil Procedure issuing arrest warrant does not arise.

8. In the humble opinion of this Court, as because, this court has not passed any order under Order XXI Rule 41 (2) of Code of Civil Procedure, in view of order of this Court dated 8.1.2020, at this stage, question of passing orders on I.A.I under Order XXI Rule 41 of Code of Civil Procedure does not arise. In the opinion of this Court, an opportunity is to be granted to both parties to comply the order XXI Rule 41(1) or Order XXI Rule 41(2) or both of Code of Civil Procedure. So, in the opinion of this court, I.A.I noted above is required to be kept pending and it is not yet riped for disposal on merits.

9. Moreover, keeping in mind the order of Hon'ble Supreme Court of India dated 10.2.2020 in Special Leave to Appeal Nos. 3393-3394/2020 noted above, taking note that the memo filed by J.Dr No.2 dated 7.3.2020 is pending for hearing, at this stage, it is not just and proper to pass orders on I.A.I.

10. The submission of D.Hr is that the J.Dr has disobeyed the order of Hon'ble Supreme Court of India dated 10.2.2020 in Special Leave to Appeal Nos. 3393-3394/2020. It is noted that as per the order sheet, on 15.2.2020 the order of Hon'ble Supreme Court is produced before this Court and accordingly, this court has passed order dated 17.2.2020 noted above. It is noted that on 7.3.2020, advocate for J.Dr has filed memo and on 10.3.2020 the advocate for D.Hr has filed

objections to the memo dated 7.3.2020 and also filed memo for issuance of arrest warrant and matter was partly argued before the learned predecessor-in-office and later on due to spread of Covid-19 and due to closure of courts, the matter is kept pending for hearing.

11. In the opinion of this Court, the submission of advocate for D.Hr that the J.Dr. No.2 has disobeyed the order of Hon'ble Supreme Court, hence, arrest warrant is to be issued against the Chairman of J.Dr No.2 may be considered on passing orders on memo dated 7.3.2020 which is filed by the advocate for J.Dr No.2. As such, an opportunity is to be granted to both sides to submit their respective arguments on memo dated 7.3.2020 filed by the J.Dr No.2 and orders may be passed on merits on memo dated 7.3.2020.

12. Hence, relying on the order passed by the Hon'ble Supreme Court of India in Special Leave to Appeal Nos.3393-3394/2020 dated 10.2.2020, taking note that on 7.3.2020 the J.Dr. No.2 has deposited an amount of Rs.3,94,555/-, it is ordered that the D.Hr and J.Dr No.1 and 2 are at liberty to submit written arguments on memo dated 7.3.2020 filed by advocate for J.Dr No.2 through physical or through email as contemplated under modified SOP dated 12.6.2020 on or before 24.6.2020.

13. However, the advocate for J.Dr No.1 and 2 and D.Hr are at liberty to submit their oral arguments in the open court or through video conference subject to the procedure as contemplated under modified SOP dated 12.6.2020 on 24.6.2020.

14. It is ordered that the D.Hr and J.Dr No.1 and 2 are at liberty to submit their written arguments on memo dated 1.6.2020 filed by advocate for D.Hr. (payment application) through physical or through email as contemplated under modified SOP dated 12.6.2020 on or before 24.6.2020. However, the advocate for D.Hr and J.Dr No.1 and 2 are at liberty to submit their oral arguments on memo dated 1.6.2020 (payment application) in the open court or through video conference subject to the procedure as contemplated under modified SOP dated 12.6.2020 on 24.6.2020.

15. Accordingly, it is placed on record that enquiry on I.A.I under Order XXI Rule 41 of Code of Civil Procedure and hearing on memo dated 15.2.2020 filed by the advocate for D.Hr and hearing on memo dated 10.3.2020 filed by advocate for D.Hr is kept pending.

16. The office is directed to intimate the date of hearing of this case to the advocate for J.Dr. No.1 in accordance with modified SOP dated 12.6.2020.

17. Call on for hearing on memo dated 7.3.2020 filed by advocate for J.Dr No.2 and hearing on memo dated 1.6.2020 (payment application) filed by advocate for D.Hr by: 24.6.2020.

Pril. District and Sessions Judge, Bagalkot.