

ORDER ON IA No.2

This IA filed by the judgment debtor No.1 and 3 U/S 151 of CPC and prays that the decree holder filed this execution petition for recovery of amount as per award passed by the Assistant Director of Co-operative Society is not maintainable in the eye of law.

2. In the annexed affidavit the judgment debtor No.1 contended that, he is the judgment debtor. The decree holder filed the case against him and other judgment debtor for recovery of the amount. He know the facts of the case. The Assistant Director of Co-operative Society has passed the award on 16.7.2018 Rs.5,71,229/- is liable to pay by the judgment debtor. The judgment debtor has to pay the said amount alongwith interest @ 24% p.a. and directed the judgment debtor to pay the same. But during the course of case pending before the Assistant Director of Co-operative Society, the judgment debtor No.2 and 4 expired about 3 years back. Inspite of it, it is not brought to the notice of the Assistant Director of Co-operative Society and obtained the decree is not maintainable in the eye of law and facts. Therefore the execution petition may be dismissed.

3. The decree holder filed the objection statement contending that, there are no grounds made out by the judgment debtor to dismiss the execution petition. It is true that, this decree holder obtained the decree in Chit Case No.29/2016-17 dt.16.7.2018 is correct. The other allegations are denied in toto. It is further contended

that, the borrower and guarantors are jointly and severally liable to pay the award amount. The judgment debtor No.1 is the main borrower and other judgment debtors are the guarantor to the loan availed by judgment debtor No.1. It is submitted that the liability of the guarantors are of the nature of personal liability and the same cannot be enforced against the legal heirs of judgment debtor No.2 and 4. Hence the legal heirs of judgment debtor No.2 and 4 are not made as a party to the proceedings. As per the award there is liability to discharge the award amount against all the judgment debtors and they are jointly and severally liable to discharge the award amount. Thereby this IA is not maintainable under law and the same is filed only to drag on the proceedings to avoid and delay the payment of award amount. Hence dismiss the IA No.2.

4. Heard the argument on both side.

5. The points arise for my consideration are as under:

1) Whether the judgment debtor No.1 has made out sufficient grounds to allow IA No.2 ?

2) What order ?

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

1) In the Negative

2) As per final order for the following;

REASONS

7. **Point No.1** :- I have gone through the contents of IA No.2 and objection statement. The judgment debtor

No.1 is never disputed about the availment of loan and award passed by the Assistant Director of Co-operative Society, Davanagere. It is the case of the judgment debtor, the judgment debtor No.2 and 4 are expired before passing the award by the Assistant Director of Co-operative Society. It is admitted by the decree holder. But the thing is the main borrower i.e., judgment debtor No.1 is liable to pay the award amount alongwith interest. In case, he is not able to pay the same or he is not having any source of income, then the decree holder has to proceed against the guarantor i.e., judgment debtor No.2 to 4. The guarantee agreement executed by the judgment debtor No.2 to 4 is on their personal liability. The legal heirs of the guarantors are not necessary party to the proceedings. Thereby the contentions raised by the judgment debtor No.1 is not holds good. It is the duty of the judgment debtor No.1 to satisfy the award passed by the Assistant Director of Co-operative Society. In order to delay for payment of award amount, judgment debtor No.1 has made tactics to file this IA. The judgment debtor No.1 is not disputed about the award passed by the Assistant Director of Co-operative Society. Moreover he has not preferred any appeal or revision before the competent court of law. Therefore in my opinion there are no grounds to dismiss the execution petition. On the other hand, the judgment debtor No.1 and 4 are jointly and severally liable to pay the award amount alongwith interest. If the judgment debtor No.1 is aggrieved by the award

passed by the Assistant Director of Co-operative Society, he is at liberty to prefer the appeal or revision, it is not done so. Therefore the reasons are not satisfied. Accordingly I answer Point No.1 in the Negative.

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

ORDER

The IA No.2 filed by the judgment debtor No.1 and 3 U/S 151 of CPC is hereby dismissed.

No order as to costs.

Prl.Senior Civil Judge,
Davanagere.