

ORDER ON IA NO.5

This IA filed by the judgment debtor No.1 & 3 U/O 21 Rule 29 of CPC and requested to stay the execution petition until the pending appeal has been decided before the JRCS Bangalore in Chits Appeal No.58/2018-19.

2. In the annexed affidavit the judgment debtor contended that, the decree holder has filed this petition for recovery of amount as per the order passed by the ARCS Davanagere. He has preferred the appeal against the orders passed by ARCS Davanagere in Dispute No.JRB/CHIT/APPEAL No.29/2016-17 before the JRCS, Bangalore and the court notice of the appeal No.JRB/CHIT/APPEAL No.58/2018-19 for stay the order passed by the ARCS in Appeal No.29/2016-17 and the said IA is pending for consideration, hence this execution petition may be stayed till the disposal of Chit Appeal No.58/2018-19. Hence this IA.

3. The decree holder filed the objection statement contending that, the IA filed by the judgment debtor is not maintainable either in law or on facts. This court is executing court cannot grant stay when the matter is pending before the Appellate Court and also no stay order is granted in the appeal. Thereby IA filed by the judgment debtor is not maintainable in the eye of law. As per the provisions of Order 21 Rule 29 of CPC the executive court cannot stay the matter on the ground of

appeal is pending. As per the said provision, if there is any suit is pending in between the parties, then only the executing court can grant the stay. But in this case, there is no such suit is pending between the parties and the judgment debtor has not produced any document to show there is suit is pending between the parties. Hence, IA is not maintainable under law. Hence, IA may be rejected in the interest of justice and equity.

4. Heard the arguments on both side.

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

1)Whether the judgment debtor has made out sufficient grounds to allow IA No.5 ?

2) What order ?

6. My findings on 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.5 and objection statement. The judgment debtor is the respondent in JRB Chit Appeal No.29/2016-17. The ARCS Davanagere has passed the necessary orders on the pleadings of the parties and directed the respondent to pay the amount of Rs.5,71,229/- alongwith interest @ 24% p.a. Against the said order, the judgment debtor has preferred the appeal before the JRCS Bangalore.

There is no stay order from the Appellate Court in respect of the order passed by the ARCS Davanagere. Such being the case, the question does not arise to stay the further proceedings of this case. This court is the executing court, thereby on the award of the ARCS this court has to execute the decree. The judgment debtor is having grievance about the order of ARCS, he has prefer the appeal before JRCS, he has to produce the suitable order from the Appellate Authority. There is no such order passed by the JRCS as on today in Appeal No.58/2018-19. Thereby the question does not arise to stay the further proceedings of the case. The judgment debtor is not able to produce any material document to show the JRCS has stayed the matter.

8. In view of Order 21 Rule 29 of CPC where a suit is pending in any court against the holder of a decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed, the court may, on such terms has to security or otherwise, as it think fit, stay execution of the decree until the pending suit has been decided. (Provided that if a decree is one for payment of money, the court shall if it grant stay without requiring security, record its reasons for so doing). In view of the above provision there is no suit pending between the decree holder and judgment debtor. Thereby the relief sought by the judgment debtor is not possible to grant.

Therefore, the reasons are not satisfied. Accordingly, I answer Point No.1 in the Negative.

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

ORDER

IA No.5 filed by the judgment debtor
U/O 21 Rule 29 of CPC is hereby rejected.

No order as to costs.

Prl.Senior Civil Judge,
Davanagere.