

**IN THE COURT OF THE II ADDITIONAL SENIOR CIVIL
JUDGE AND J.M.F.C. HUBBALLI**

Present:- Smt. Deepa G. Manerkar,
B.Com. L.L.B, (Spl.)
II Addl. Senior Civil Judge & J.M.F.C.,
Hubballi.

Dated this the 06th day of December 2025

Ex.No.126/2023

Smt. Sangeet Vetrikumar

...Decree holder

-Versus -

Smt. Liza @ Izabel B. Nalasco O'Connor and two others

...Judgment debtor

:: PARTIES TO I.A.NO.V

Smt. Liza @ Izabel B. Nalasco O'Connor and two others

**Applicant/ Judgment
Debtor**

-V/s -

Ananth Krishna S/o M. Laxmi Narayan Upadya

Opponent/Ori Decree Holder

ORDERS ON I.A. NO.V UNDER SEC.151 OF CPC

The present I.A. No.V is filed by the Jdr No.1 to 3
to recall the order of sale proclamation dt:30-10-2025.

2. In the affidavit annexed to I.A., it is sworn by the Jdr No.1 that, her husband left for heavenly by leaving them. They are the present judgment debtors to either accomplish all his unfinished projects or to suffer humiliation and hardship at the hands of all. She had knowledge of the projects, contacted the owners and pleaded to execute necessary documents in name so that the intended project envisioned by his late husband could be accomplished in all respects, but to no avail. At such time immediately after the demise of his husband she was surrounded by claims from all persons stating that they have entered into agreements with her late husband and invested their money and as such, those persons demanded refund of their invested amount. The present decree holder also placed such a demand.

3. The sudden demise of her husband and therefore she could not promise any of the claim of individuals. So, she requested them to wait for some time so that she can really understand her late

husband's business, check his bank details, take note of all documents, work out the easy mode to help all the claimants and return then investments as well. She intended to clear all claimant's investments and therefore, she with the help of her family friends again approached the land owners and requested them to execute the necessary documentation in her name to complete the projects by raising further funds. The land owners refused to continue the deal and instead proposed to refund paltry investment amounts made by her late husband in his project.

4. That scrapped all agreements, rights, title and interest if any that could be acquired by her through litigations also unto the land owners though they had entered into joint development agreements with her late husband. Upon doing so, the land owners in both the projects selfishly paid only 95% of her husband's investments and contumaciously retained a sum of Rs. 5,00,000/- with them due to the present litigation. Jdr

has not retained any piece of land and simply received the investment money from the land owners and cleared the agreement holders claim at various intervals because all the investors had reposed faith in her husband.

5. As many as 32 investors invested money under agreement of sale for plots in project way back in 2016-17 itself and upon sudden demise of her husband all these 32 persons were worried about their investments. She cleared everyone's investments as and when she received her husband's investment back from the owners. The present decree holder is also one among the 32 members that except the present decree holder, rest other 31 persons who believed in her words got their investments back, some got the agreements and many waived part of their investments also and received the balance as and when she got investment from the land owners she refund the present decree holders money as per her agreement soon. Therefore, propose to clear her agreement amount within four

months and to prove her bonafide intention that she is ready to deposit some money in the court. She has no source of income of her own. Hence prayed to allow the application.

6. The DHR has filed objection to the present IA, contending that the allegations made in I.A. and supporting her affidavit are all false, concocted, created, story not maintainable in law and liable to be dismissed as such this Hon'ble court being executing court cannot go beyond the decree. That the IA filed by Jdr is clearly an abuse of the process of law and it is liable to be dismissed. That on 5/12/2019 the DHR filed a suit against JDR for specific performance of contract in O.S.No.380/19 before this Hon'ble court. The Hon'ble court was pleased to decree passed and directed to JDR to pay the earnest money of Rs. 6,00,000/- to JDR with interest of 6% per annum from the date of filing the suit till realization to the DHR. The JDR has not challenge the said decree nor paid the amount, The JDR has

willfully failed to comply with the decree for this DHR filed this execution petition for executing the decree. DHR taken steps so many times to JDR and return unserved as door lock and later on 28/2/25 JDR and her counsel sought time for settlement and on 7/3/25 JDR have not approached regarding settlement and again this DHR issued sale notice to JDR's through paper publication. That on 30/10/25 sale notice was served through paper publication to JDR and issued sale proclamation and fixed a date of spot sale on 13/12/25 and date of court sale 15/12/25 Dhr paid the proclamation charges and taken warrant to spot sale meanwhile Jdrs advanced the case and filed the said I.A. to re-call order of sale proclamation. It is not maintainable in law,

7. During the pendency of this case the Jdr already sold 02 acres of land without obtaining the court permission on behalf of the minor children i.e., other JDR's and now she is trying to sell the remaining

portion. These are all the tactics adopted by the JDR only to delay and defeat the execution proceedings and to cause financial loss to the decree holder and the application contained no valued nor legally sustainable grounds for recall of the sale proclamation order.

8. That the Jdr had full knowledge of the execution proceedings, attachment, valuation and the sale fixing proceedings and never raised any objection of the appropriate stage. After the sale proclamation order has been passed the JDR cannot seek recall merely to delay execution Proceedings. That the JDR has not shown any sufficient cause as required under order 21 of CPC for recall of the sale proceedings nor has she deposited the decretal amount before this Hon'ble court. Mere filing of an application without compliance of the provision is not maintainable in law. That the DHR will suffer heavy and irreparable loss caused if the sale proclamation proceedings are recalled where as no

prejudice will be caused to the otherside. Hence, prayed to dismiss the application with cost of Rs.10,000/-.

9. On the basis of rival contentions the points that would arise for my consideration is:

1. Whether the present application deserves to be allowed?
2. What order ?

10. My findings to the aforesaid points is as under :

Point No.1 : In the Negative.

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

REASONS

11. **Point No.1**:- The present IA is pressed into service by the JDR No.1 to recall sale proclamation issued against petition property on the ground that her husband died and the uncomplished projects on her shoulder. After demise of her husband, she in order to clear the investments made by the people with her

husband, she with the help of her friends and family members approached the landowners and requested them to execute necessary documents to complete the projects. Since the landowners refused to continue the said projects with her, she asked them to refund investment amount made by her husband in her favour. She claims that she bargained and agreed to take back her husband's investment made in the land subject to her relinquishing right, title and interest in favour of land owners. That the landowners have paid only 95% of her husband's investment and retained about Rs.5,00,000/- with them due to the present litigation and after receiving the same, she would clear the agreement holders claim at various intervals. That as many as 32 investors had invested money with her husband under the agreement of sale of plots with her husband's project in the year 01.06.2017 and after the demise of her husband the said investors are worried about their investment and now she is intending to clear

those investments and in order to do so she has also got cancelled certain agreements. She further claims that she intends to clear her obligation of paying amount under decree within 4 months and she will accomplish her bonafide intention and she is ready to deposit some money in the court. She further claims that she is a single mother and she is under shelter of her old aged mother and her brother. She would clear the said loan after receipt of money from the Project from the investment made by her husband with land owner.

12. Therefore, on going through the grounds urged in the present application, it is abundantly clear that the JDR No. 1 has sought time for repayment of the amount under the decree. She claims that she is yet to receive some amount from land owners with whom her husband had entered into project work. The counsel for the JDR No.1 argued in line with the contentions taken up in the application and the JDR No.1 has produced certain agreements which have been executed by her

husband in favour of various persons and the same have been cancelled after receipt of money by the said agreement holders. No doubt, the present JDR might have paid money to the persons with whom her husband had entered into the agreement. But that cannot be the ground to recall sale proclamation in the present case. As can be seen from the order sheet, the JDR No.1 appeared through counsel in the present case on 18.01.2024 itself. Thereafter on 29.01.2024 she changed her counsel and appointed new counsel. On the said day itself attachment of immovable property warrant was issued. Meaning that the counsel for JDR No.1 and counsel appearing for JDR No.1 had knowledge the warrant of immovable property of JDR No.1 is being attached. Thereafter also on 03.02.2024 as per bailieff report attachment warrant has been executed and encumbrance of attachment of property was also entered in the revenue records in the year 2024 itself i.e., on 03.02.2024. Since the order of passing order of

attachment of immovable property on 29.01.2024 no amount has been deposited before this court by the JDR No.1. Therefore the DHR has taken steps and the attached property was ordered to be sold and accordingly sale proclamation is issued on 25.07.2025 itself and the sale notice has been issued through paper publication. Thereafter on 30.10.2025 after issuance of sale notice through paper publication, sale proclamation was issued and thereafter the present application is pressed into service by the JDR No.1 to recall sale proclamation seeking time to make payment by assigning the reasons of repayment to be made to by land owner, who had entered into agreement with her husband. However, in the present case, since the date of appearance of the JDR No.1 before this court, she has not made any efforts to deposit some amount. Under such circumstances if sale proclamation issued is recalled, it is the DHR who will be put to a loss and hardship since she has been wondering before the court

to get the fruits of decree from the year 2023 itself. Even after filing the present application no amount has been deposited by the JDR No.1. Under such circumstances no grounds have been made out to stall or postpone the sale proclamation. As such the present I.A. deserves to be rejected and its above point is answered in the **negative**.

13. **Point No.2** : In view of the findings and answer to point No.1, this court proceeds to pass the following:-

ORDER

I.A.No.V filed by Jdr No.1 under Sec.151
of CPC is hereby dismissed.

(Dictated on AI Adalath, corrected by her, verified by me, and then pronounced in the open court on this the 06th day of December 2025.)

Sd/-

(Smt. Deepa G Manerkar)
II Addl. Senor Civil Judge and JMFC
Hubballi.