

ORDERS ON I.A.NO.V

The counsel for R.N. Shiralkar filed an application under Sec.151 of C.P.C., seeking to dismiss the petition against Shri. Raghunathsa Ningusa Shiralkar in the interest of justice and equity.

2. On the other hand, the counsel for Decree Holder has filed objections to said application.

3. *Heard both side.*

4. *The brief facts of the affidavit annexed to application is that, one Vithalsa Nagosa Pawar has filed false, frivolous, vexatious Execution Petition in Execution Case No.155/2023 before this Hon'ble court and he has mischievously got the execution notice served on R.N. Shiralkar. Shri. R.N. Shiralkar personally not a judgment debtor, and he has not suffered any award, decree or order against him. The Execution petition is totally false, frivolous and vexatious and the same is not at all maintainable in law or on facts and the Execution Petition as against him is wholly misconceived deliberately fabricated by the Petitioner/Decree Holder and R.N. Shiralkar was personally not a party to any of the proceedings based on which the present execution petition has been filed. No decree, award or order has been passed as against him personally and absolutely there is no cause or reason for any petition against him. The decree holder above named has not impleaded*

him personally in the proceedings, and there is no liability personally attached. It may be seen from the records that, the execution petition also does not show his name of Shri Raghunathsa Ningusa Shiralkar in any capacity, therefore, the notice served on him, Shri Raghunathsa Ningusa Shiralkar is totally improper, incorrect, illegal and invalid. The present Decree Holder had filed the case against Ambika Co-operative Housing Society Ltd, and an award was passed against the said Co-Operative Society. He was not a party personally in that case. The Ambika Co-operative Housing Society has been dissolved by an order dated:28.03.2023 of ARCS Dharwad in No. DRZ/LQD/CR-47/2022-23, and from the said date above named JD No.1 society does not exist.

It is further submitted that, an Administrator has been appointed by the Hon'ble ARCS Dharwad in his order dated:01.02.2021 in No.AR 15/RSR/Kalam 2805/C.R./2020-21, and under the said order the Administrator

has assumed the charge, and taken over the charge of Ambika Co-operative Housing Society limited on 27.02.2021, and from 27.02.2021 any action against the said society ought have been served on the Administrator, and any and all proceedings against the society, and Orders or awards passed thereunder without impleading the administrator shall be highly illegal, invalid and void totally. As on the date of order which is now sought to be executed he is not at all president of the said Society. The Administrator has taken over the charge of the Society On 27.02.2021. The Execution Petition was served on him, and the petitioner is seeking attachment of his personal property which is highly illegal, mischievous and contrary to facts and Laws. He is not the president of the Society as on the date of filing the execution or on this date. There is a passed Award or Decree as against him. Despite knowing this fact fully well the decree holder above named has mischievously got the notice served on me

personally by totally misguiding and misleading this Hon'ble Court. There is no personal award, decree or order as against him, and hence the petition as against him does not survive for consideration at all. Hence, prayed to allow the I.A.

5. The objections of the decree holder is that after giving sufficient opportunities to the judgment debtor has not filed their objections with a malafide intention. Hence the Hon'ble Court was pleased to pass an order as Objections not filed on 06-01-2024. The Judgment Debtor with a malafide intention to create complication and drag the proceedings has filed the said I.A. The Judgment Debtor had appeared before the Arbitrator & Co-op. Societies Assistant Registrar, Dharwad in Case No. AR-15/ABN-DDS/03/2016-17, which has been disposed on 17-12-2021 in favour of Decree Holder. Accordingly the judgment Debtor is liable to pay the compensation. But the Judgment Debtor has failed to pay the amount and has

falsely filed this application to drag on the matter. Hence, prayed to dismiss the I.A.

6. The proposed party has filed the present application under Section 151 of CPC. The contention of the petition is that he had been removed from the office of president or chairman of a society with effect from 01.06.2012 and was disqualified from holding office for a period of 5 years. It is further contented that much prior to the passing of the award the society had been placed under Administration liquidation under the charge had already been handed over to the administrator. Hence, it is contented that the proceedings against him are not maintainable.

The records placed before the court clearly disclose that he was removed from the management of the society by the competent authority and ceased to represent the society from 01.06.2012 till 5 years. There is no material to show that he continued to hold any office in the society thereafter. The records further indicate that the affairs of the society

were being managed by the statutory authorities appointed under the Co-operative Societies Act. In view of above facts, this Court is of the opinion that the applicant cannot be proceeded against in his capacity as president or chairman or representative of the society after his removal from office. Therefore, continuation of the proceedings against him in such an event is not warranted. Moreover, if the application under Order I Rule 10 (2) is already dismissed and when he is not impleaded as party to the petition question of dismissing the petition against proposed party does not arise at all. Hence, such application is subject to result of the IA No. 4. Hence, application is not maintainable and infructuous.

sd/-

*I Addl. Senior Civil Judge and JMFC.,
Hubballi.*