

**IN THE COURT OF V ADDL. SMALL CAUSES JUDGE AND
XXIV A.C.M.M. Court of Small Causes Mayo Hall Unit,
Bangalore. (SCCH.20)**

Dated this the 2nd day of January, 2023

**Present:Smt.Sharmila C.S. BA.L., LL.M
V Addl. Small Causes Judge,
& XXIV A.C.M.M.**

MISC.No.15002/2020

Petitioner : Sri Mohammed Khaleel
S/o Mohammed Hayath
Aged about 64 years
R/at Varda Mill Road
N.R.Extension,
Chinthamani – 563 125
Chikkaballapura Dist.

-Vs-

Respondent : Smt. R.Nigar Sultana
W/o Liyakhat Ali Khan
Aged about 54 years
R/at No.63, Khazi Street
Basavanagudi
Bangalore – 560 004.

ORDERS ON IA-8 UNDER SECTION 151 OF CPC

The application is filed by the petitioner seeking stay of
the further proceedings in Ex.No.182/2019.

2. The PW-1 has deposed that in the Mis petition, the respondent had obtained a judgment for damages against him. That he was placed exparte in that petition. That the stay passed was vacated and the respondent is delaying the matter. Thus prays to allow the application as sought for.

3. The counsel for the respondent filed objection and submits that after completion of the evidence, the petitioner is delaying the matter and thus prays to dismiss the petition.

4. Heard from the counsel for the respondent and petitioner.

5. The following points arise for my determination.

POINTS

- 1 Whether there is necessity of stay of Execution petition. ?
2. What order?

6. My findings to the aforesaid points are as follows.

Point no.1 : in the negative

Point no.2 : as per the final order
for the following.

REASONS

7. **POINT No.1:** The present petition is filed seeking restitution of said Mis petition and the petitioner has been examined as PW-1. That the evidence of witness was also completed and the respondent also had examined the witness DW-1 and she has been cross examined by his counsel. Thus after the evidence of the respondent, when the respondent counsel filed some documents, which are the certified copy of the order sheet, judgment etc., pertaining to the earlier petition, the counsel for the petitioner also filed application seeking recall of the stage in order to examine a witness. Thus submits that there is no delay caused by him and if the delivery warrant is issued, purpose of filing of Mis petition will fail. That the said

mis petition is not at all maintainable and hence prays to stay EP.

8. It is pertinent to note that earlier stay of execution was ordered for a period of 3 months before this court. The petitioner did not co-operate with court proceedings and 3 months time was elapsed and in spite of it, matter stayed and posted for respondent evidence. In the mean time on 27.05.2022, the respondent evidence was closed and the respondent got examined as RW-1 on 06.06.2022. Mean while the respondent got filed application seeking recall of PW-2 for cross examination which was closed on 07.07.2022. Therefore on 12.07.2022, the counsel for petitioners filed IA No.6 under order XVI rule 1 and 2 of CPC which came to be dragged for filing of objection and finally both were allowed on 03.08.2022. Therefore even after getting same allowed, the defendant was very much present before this court and was ready to lead further chief examination. But the counsel for the petitioner nor

the petitioner were present before this court for taking proper steps, which they paid on 08.08.2022. However, it is pertinent to note that neither the petitioner nor the counsel were present in the morning session and the counsel submitted that he cannot come to the court till 12.30 pm., or 01.00 PM., and also submitted to the court to pass over the case, even though he is not present and though there is no representation from their side. However, on warning of the court, the petitioner was present from next date continuously in the morning session.

9. It is pertinent to note that the petitioner is trying to get restored the petition filed for damages by submitting that the summons were not served upon him. Therefore the petitioner is trying to examine his friends and neighbours who are in the said Chinthamani at the time of receipt of the summons. Therefore it is clear that the persons, the petitioner is trying to examine are very well known to the petitioner. Therefore the summons was issued on 08.08.2022, the witness could not be

present and it was finally brought to the notice to the court that the witness name was wrongly noted in the process and the said witness has refused the court notice. The witness is absent continuously even after issuance of the bailable warrant and the matter was dragged on without keeping present the witness till 25.11.2022, where the order of stay was suomoto vacated in view of non co-operation by the petitioner. Now the present application is filed, when the counsel for the respondent, filed an application seeking attachment of movables of the JDR i.e., petitioner in this case.

10. As stated above, the petition is pertaining to 2020. The petitioner is not co-operating with the process of the court by bringing the witness, who are very well known to him and are the residents of the native of the petitioner. The counsel for the petitioner and the petitioner have relied upon the application filed by the respondent, but have failed to note about the application filed by them and also the reasons for causing the

delay in Misc petition, which is by not bringing the witness to this court. When the witness is alleged to be neighbors, the witness being absent in spite of bailable warrant and dragging the matter continuously without providing opportunity to the respondent to lead examination and filing this type of application causing delay itself is clear to the fact that the petitioner is trying to drag on the matter. The petitioner is trying to blame upon the respondent by concealing real facts of which he has summoned the witness and not trying to bring him to the court. Therefore there is clear intention of the petitioner only to drag the matter for the reason best known to him and in not co-operating with the process of the court. If the petition is stayed, the petitioner will further more drag the matter and will not co-operate with the process of the court in arriving to the disposal. The tortfeasor cannot take the advantage of his own fault and accordingly the above point is answered in negative. by holding that no proper reasons are made out in order to stay the EP.

11. Point No.2: In view of the above discussion, I proceed to pass the following:

ORDER

The IA-No.8 filed by the petitioner under section 151 of CPC is herewith dismissed with cost of Rs.200/-.

[Dictated to the stenographer, computerized by him and then pronounced by me in the open court on this the 2nd day of January 2022.]

Vth Addl. Judge & 24th ACMM
SCCH-20, Mayohall Unit, Bangalore

02.01.2023

(Order pronounced in the open court
vide separate Order)

ORDER

The IA-No.8 filed by the petitioner
under section 151 of CPC is herewith
dismissed with cost of Rs.200/-.

V ASCJ & IV ACMM

By Pleader Sri.M.P.Basavaraju, Adv.)

-Vs-

RESPONDENT :