

Presented on : 18-12-2020
Registered on : 18-12-2020
Decided on : --
Duration :

**IN THE COURT OF
PRL SENIOR CIVIL JUDGE AND JMFC AT Ranibennur,HAVERI
Presided Over by Smt. Yasmeen Parveen Ladkhan**

EX/165/2020

ORDERS ON I.A No.4.

- I. The Counsel for D.Hr has filed this I.A U/o.21 Rule 38 R/w sec.151 of CPC.
- II. The D.Hr has sworn to the affidavit stating that he is the decree holder in M.V.C No.1351/2018 and this court has passed award of Rs.16,05,292/- with interest at the rate of 7% on 01-10-2020 as he has sustained injuries in the Motor Vehicle Accident, hence he has filed this petition. The deponent has also sworn to the affidavit stating that due to the injuries sustained in an accident he is unable to carry out any avocation. The J.Dr is not having any movable and immovable properties, hence arrest warrant be issued against the J.Dr.
- III. The counsel for J.Dr has filed objections stating that this court has got no jurisdiction to entertain the present application. The application is not

maintainable as no arrest notice is issued and directly cannot seek for arrest warrant against the J.Dr, hence the application be dismissed with cost.

IV. I have heard the arguments of counsel for D.Hr and counsel for J.Dr has submitted that his arguments may be taken as heard, which is though not addressed .

V. I have perused the materials placed before the court.

VI. The following points have arisen for my consideration.

Point No.1:- Whether the application filed U/o.21 Rule 38 R/w sec.151 of CPC deserves to be allowed?

Point No.2:- What Order?

VII. My answer to the above points is as under;

Point No.1: In the Affirmative

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

REASONS

VIII. **Point No.1:** On perusal of materials placed before the court reveals that the Decree Holder has filed this Execution petition for the execution of the award passed MVC No.1351/2018, dated 01-10-

2020. The D.Hr has examined himself as PW-1 by filing affidavit evidence has reaffirmed the contents of I.A No.4. The D.Hr is fully cross examined by counsel for J.Dr but nothing in favour of J.Dr is elucidated from the mouth of D.Hr.

(A) On perusal of the order-sheet reveals that the J.Dr has appeared through his counsel but has not filed any objections to the main petition.

(B) On perusal of the order-sheet dated 03-01-2022 reveals that I.A No.2 filed by D.Hr U/o.21 Rule 37 R/w sec.151 of CPC is allowed and the court has observed that ARTO of Ranebennur has sent a letter to this court stating that the J.Dr has already transferred his vehicle to another person on 15-11-2020 before passing the order on I.A No.1 which was filed U/o.38 Rule 7 R/w sec.151 of CPC not to transfer Tipper Lorry Bearing Reg. No.KA-68/0125.

(C) The D.Hr has examined himself as PW-1 and he is also fully cross examined by counsel for J.Dr.

(D) On perusal of the award passed by this court on 01-10-2020 reveals that the petition filed by the petitioner (ie., the present D.Hr) U/sec.166 of M.V Act came

to be partly allowed with cost and the petitioner is entitled for total compensation of Rs.16,05,292/- with the interest at the rate of 7% per annum from the date of petition till realization from respondents. The Respondent No.1 is held liable to pay the said compensation along with the interest accrued thereon within a period of 2 months.

(E) The D.Hr has filed this execution petition on 18-12-2020 as the J.Dr (Respondent No.1 of said MVC No.1351/2018) failed to make payment .

(F) The D.Hr has sworn to the the affidavit stating that J.Dr has got no movable and immovable properties . Already arrest notice is duly served upon J.Dr on 26-05-2022. The D.Hr has sworn to the affidavit stating that he is unable to any work due to the injuries sustained in the Road Traffic Accident. The D.hr has exhausted remedies available to him . In spite of due service of arrest notice, the J.Dr has not deposited any decretal amount and thereby has made out grounds to allow the application, hence the point No.1 is answered in the Affirmative.

IX. **Point No.2:** For the reasons stated and

discussed as above I proceed to pass the following

ORDER

I.A No.4 filed by D.Hr U/o.21 Rule 38 R/w sec.151 of CPC is hereby allowed on cost.

Issue arrest warrant against J.Dr if P.F and substance allowance is deposited in the court as per Rule 39 of order 21 of CPC.

(Dictated to the Typist directly on computer, typed by her same is corrected, signed and then pronounced by me in the Open Court on this 15th day of November 2022).

Call on 12-12-2022.

sd/-

Prl. Senior Civil Judge & JMFC,
Ranebennur.