

Ex.66/2026

ORDER ON INQUIRY

The present execution petition is filed by the Decree Holder, Co-operative Bank, seeking recovery of the decretal amount of Rs.51,887/- awarded under an arbitration award passed against Judgment Debtors Nos.1 to 3.

2. Upon presentation of the execution petition, notice under Order XXI Rule 37 of the Code of Civil Procedure, 1908 was issued to the Judgment Debtors. Subsequently, as they failed to satisfy the decree, warrant of arrest was issued. Pursuant thereto, Judgment Debtor No.1 was secured and produced before the Court. After conducting the enquiry contemplated under Order XXI Rule 40 of the Code of Civil Procedure, he was committed to civil prison. During his detention, a sum of Rs.20,000/- was paid towards the decretal amount and, consequently, Judgment Debtor No.1 was ordered to be released.

3. Thereafter, on 19.09.2026, the son of Judgment Debtor No.1 appeared before the Court and submitted that Judgment Debtor No.1 is aged about 75 years and has no independent source of income. He further submitted that if the Decree Holder agreed to reduce or settle the outstanding amount, he would make arrangements to clear the dues. The Decree Holder, however, declined the proposal and insisted upon payment of the entire decretal amount. In view of the said submission, this Court considered it appropriate to hold a further enquiry regarding the present means of the Judgment Debtors before proceeding with the execution by arrest.

4. In support of its case, the Chief Executive Officer of the Decree Holder entered the witness box as PW.1. Except producing a tax assessment extract relating to a property situated at Lingadahalli Village standing in the name of Judgment Debtor No.1, no other oral

or documentary evidence has been produced.

5. The tax assessment extract is only a fiscal record maintained for the purpose of assessment and collection of property tax. It is neither a document of title nor does it conclusively establish ownership or the existence of an attachable interest in the property. The extract does not disclose the nature of the right held by Judgment Debtor No.1, nor does it establish that the property is free from encumbrances or is capable of being proceeded against in execution. In the absence of title deeds, revenue records or any other admissible material establishing ownership, the said document by itself cannot be treated as proof of sufficient means.

6. It is also pertinent to note that no material has been placed before the Court to establish that Judgment Debtors Nos.2 and 3 possess any movable or immovable properties or independent source of income. Though they are stated to be

guarantors to the loan transaction, the Decree Holder has not produced the loan application, guarantee agreement, mortgage documents or any other record to show that they had furnished any valuable security or possessed sufficient financial capacity either at the time of availing the loan or at present. The evidence on record, therefore, does not disclose that the loan was secured by any valuable asset.

7. Under the proviso to Section 51 of the Code of Civil Procedure, a judgment debtor cannot be committed to civil prison unless the Court is satisfied, for reasons to be recorded in writing, that he has or has had, since the date of the decree, the means to pay the decretal amount or a substantial part thereof and has refused or neglected to pay the same. Likewise, the enquiry contemplated under Order XXI Rules 37 and 40 of the Code of Civil Procedure casts a burden upon the Decree Holder to establish the existence of such means before the

Court can resort to the coercive mode of arrest and detention.

8. The Hon'ble Supreme Court in Jolly **George Varghese v. Bank of Cochin** **-(1980) 2 SCC 360** has categorically held that mere non-payment of a decree is not a ground to order detention in civil prison and that imprisonment can be ordered only upon recording a finding that the judgment debtor has sufficient means to pay but has deliberately or wilfully refused to discharge the decree. The said principle has consistently been followed while interpreting Section 51 and Order XXI Rules 37 and 40 of the Code of Civil Procedure.

9. In the case on hand, except producing a tax assessment extract, the Decree Holder has failed to place any acceptable evidence to establish that Judgment Debtors Nos.1 to 3 presently possess sufficient means to satisfy the decree. There is absolutely no evidence regarding their present income, employment,

business, movable assets, bank deposits, immovable properties capable of attachment or any other financial resources. Consequently, this Court is unable to record the statutory satisfaction mandated under the proviso to Section 51 of the Code of Civil Procedure.

10. The execution by way of arrest and detention being an exceptional and coercive remedy, the statutory conditions must be strictly satisfied. In the absence of proof regarding the present means of the Judgment Debtors and their wilful refusal or neglect to satisfy the decree despite possessing such means, continuation of the present execution proceedings would be contrary to the mandate of Section 51 and Order XXI Rules 37 and 40 of the Code of Civil Procedure.

11. Accordingly, this Court holds that the Decree Holder has failed to establish the essential requirements for proceeding against the Judgment Debtors by arrest and detention.

Hence, the execution petition deserves to be dismissed, reserving liberty to the Decree Holder to initiate fresh execution proceedings in accordance with law if subsequently any attachable property or sufficient means of the Judgment Debtors are discovered.

ORDER

The Execution Petition is dismissed.

No order as to costs.

Prl. Civil Judge & JMFC,
Ranebennur.