

**IN THE COURT OF THE CIVIL JUDGE AND  
JUDICIAL MAGISTRATE FIRST CLASS,  
AT : CHITTAPUR**

**Present :- Sri. Santoshkumar Daivajna**

**B.Com, L.L.B.(Spl).**

**Civil Judge & J.M.F.C., Chittapur**

**E.P.No.03/2019**

**Dated on this the 16<sup>th</sup> day of December -2023**

**Decree-holder/s:- M.A. Sadiq S/o M.A. Rasheed,**

**(Since deceased through his LR's)**

**Farzana Begum Chowdary W/o Late:M.A. Sadiq  
& Others.**

**(By Sri. M.V.L., Advocate)**

**V/s.**

**Judgment-debtors :- Jalinna Begum W/o Fathrusab  
& another.**

**(By Sri. R.K., Adv.)**

**Parties to IA.No.VIII.**

**Applicant/JDr No.1 :-Jalinna Begum W/o Fathrusab,  
and another.**

**V/s**

**Opponent/Dhrs. :- M.A. Sadiq S/o M.A. Rasheed,**

**(Since deceased through his LR's)**

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**ORDER ON I.A.No.VIII UNDER ORDER XXI RULE**  
**29 OF CPC**

The applicant/JDr No.1 has filed this interim application under Order XXI Rule 29 of CPC praying to grant stay the further proceedings of present execution petition till disposal of application, which is pending in O.S.No.96/2013.

2. In the accompanying affidavit of the said application, it is stated that, the Judgment-Debtor No.1 filed application in O.S.No.96/2013 for cancellation and set aside the compromise decree which is pending for consideration before this court. The Judgment-debtor specifically stated in the application that, the Decree-holder by fraudulently and by misrepresenting the court obtained the compromise decree by impersonating the Judgment-debtor No.1 before this court. In fact and in law the judgment-debtor No.1 never put any signature or thumb impression in the compromise petition and she was not at all appeared before this court. Therefore, the application is filed by the judgment debtor for cancellation of compromise decree which is pending for consideration in O.S.No.96/2013. On these grounds the applicant/

Judgment debtor No.1 prays this court stay the further proceedings of present execution petition till disposal of the IA in O.S.No.96/2013.

3. On the other hand the counsel for the DHr filed objection to the above said application. It is contented by the DHr that, the Judgment-debtor has filed this application U/o XXI Rule 29 of CPC., to stay the proceedings in this E.P. is till disposal of the application which is pending in O.S.No.96/2013 in the interest of justice. It is further contented that, the order XXI Rule 29 of CPC., reads “Where a suit is pending in any court against the holder of a decree of such court ----- until the pending suit has been decided”. It is contented that, the suit O.S.No.96/2013 is not pending but disposed of on 03-03-2018 and compromise decree is drawn. Hence, this present application filed U/o XXI Rule 29 of CPC is not maintainable because no case is pending between Decree-holder and Judgment-debtor in any other court. On these grounds the decree holder prays this court to dismiss/ reject the application with heavy cost.

4. Heard the counsel for the JDr and DHr on the above said application.

5. **The following points arise for consideration :-**

**P O I N T S**

1. *Whether the application filed by the JDr No.1 U/o XXI Rule 29 of CPC deserve to be allowed?*
2. *What order?*

6. **My answer to above said points are as follows :**

Point No.1 : In the *Negative*.

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

**R E A S O N S**

7. **Point No.1** :- The Decree-holder has filed this execution petition against the Judgment-debtors for the reliefs of directing the Judgment-debtors to execute registered sale deed with respect of the schedule property shown in the execution petition. During the course of proceedings the Judgment-debtor No.1 filed above said I.A.No.VIII with prayer to stay the further proceedings present execution petition. It is the contention of the

Judgment-debtor No.1 that, she has filed application in O.S.No.96/2013 for setting aside the compromise decree, on the ground that, the decree holder by fraudulently by misrepresenting the court obtained the compromise decree by impersonating the Judgment-debtor No.1 before this court. It is also contention of the Judgment-debtor No.1 she never put her thumb impression or signature to the compromise petition and she is not at all appeared before the court. On these grounds this Judgment-debtor No.1 prays this court to stay the further proceedings of the execution petition. On the other hand the counsel for the Decree-holder contented that, the O.S.No.96/2013 is not pending before the court and same is disposed on 03-03-2018, the compromise decree drawn and hence, the present application is not maintainable. On these grounds the Decree-holder prays this court to dismiss the above said application with heavy cost. The counsel for the Decree-holder relied on the citations ILR 2004 Karanataka 1558 wherein the Hon'ble High Court of Karantaka held that:

*The power of stay execution of the decree U/o 21 Rule 29 of CPC is discretionary. The discretion should be exercised judicially and not mechanically as a matter of course. On mere satisfaction of the per-condition stipulated in Order 21 Rule 29 of CPC, the execution proceeding is not to be exercised only exceptional case where the interest of justice requires it. The fundamental consideration should be that the decree holder is not to be deprived of the fruits of the decree except for good reasons. The decree must be allowed to be executed and unless an extraordinary case is made out, no stay should be granted.*

8. It is the contention of the JDr that, the JDr No.1 filed application in OS No.96/2013 for cancellation and setting aside the compromise decree which is pending for consideration before this court. On this ground the JDr prays this court to stay the further proceedings of above said execution petition. On the other hand the counsel for the DHr contended that, the OS No. 96/2013 is not pending but the same is disposed off on 03.03.2018 the compromise decree drawn and hence the present application filed U/o XXI Rule 29 of CPC is not maintainable and prays to dismiss / reject the above said application. Admittedly there is no

any suit pending before the court. This court passed necessary order on the application filed by the this JDr No.1 in the OS No. 96/2013, today itself this court directed the office to register the Civil Misc. the application filed U/o XXIII Rule 3(a) of CPC. The portion of the order read as “The Office is hereby directed to register the application filed by the applicant U/o XXIII Rule 3(A) of CPC dated 22-02-2023 as Civil Miscellaneous petition and put up on : 21-12-2023”. Hence, there is no suit pending before the court.

The order XXI Rule 29 of CPC is read as:

***29. Stay of execution pending suit between decree-holder and judgment-debtor.***

*Where a suit is pending in any Court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided: **Provided** that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.*

9. As discussed above admittedly there is no any suit pending before this court or any other court between the Decree-Holder and Judgment-Debtor. Hence, this court answered point No.1 in the *Negative*.

10. **Point No.2** :- For the above said reason and findings on point No. 1, this court proceed to pass the following;

**ORDER**

The Interim Application i.e., I.A.  
No.VIII filed by the JDr No.1 U/O XXI  
Rule 29 of Code of Civil Procedure is  
hereby dismissed.

No order as to cost.

(Dictated to the Stenographer directly on the computer, typed by him, corrected and pronounced by me in the Open Court on this the **16<sup>th</sup> day of December - 2023**).

**(Santoshkumar Daivajna)**  
**Civil Judge & JMFC,**  
**Chittapur.**

**(Order pronounced in the open court  
vide separate Order)**

**-:: ORDER ::-**

The Interim Application i.e., I.A.  
No.VIII filed by the JDr No.1 U/O XXI Rule 29  
of Code of Civil Procedure is hereby dismissed.

No order as to cost.

**Civil Judge & JMFC,  
Chittapur.**