

10.1.2025.

Orders on IA No.4 U/s 151 of CPC

The judgment debtor has filed this application U/s.151 of CPC and sought to stay the proceedings of this case.

2. The SPA holder of judgment debtor has sworn to an affidavit in support of IA and stated that the judgment debtor/defendant preferred appeal in RFA No.200211/2024 on 17.12.2024 before the Hon'ble High court of Karnataka, Kalaburagi Bench. As per Section 96 of CPC the appeal is continuation of the suit. Hence, in order to avoid multiplicity of proceedings sought to stay the proceedings of this case. Hence, prays to allow the IA.

3. The decree holder has filed objections to IA and contended that he had filed suit for specific performance against the judgment debtor in O.S.No.49/2018 dated 27.9.2024 directing the judgment debtor to execute the registered sale deed and directed the decree holder to deposit balance sale consideration amount within two weeks and accordingly the said amount was deposited. The judgment debtor intentionally avoiding the execution of the sale deed. Therefore, the decree holder has filed the execution petition. No stay order is granted by the Appellate Court. Hence, this application is not maintainable. Hence, prays to dismiss the IA.

4. Perused the records. Heard arguments.

5. The copy of the judgment and decree show that the decree holder had filed suit for specific performance against the judgment debtor in O.s.N.49/2018 on the file of this court and the same was decreed on 27.9.2024 directing the defendant/judgment debtor to execute the sale deed within one month and also directed the decree holder to deposit the balance sale consideration amount of Rs.1,00,000/-. Since the judgment debtor failed to execute the sale deed the decree holder had filed this execution petition. It is on record that aggrieved by the judgment passed by this court in O.S.No.49/2018 the judgment debtor had already preferred Regular First Appeal in RFA No.200211/2024 on 17.12.2024. It is also on record that no stay order is granted in the said appeal.

6. It is to be noted that in the opinion of this court when the judgment debtor has already filed an appeal, it is open for him to request the appellate court to grant stay of operation of judgment and

decree of the trial court. The Executing court can stay the proceedings for a reasonable time to enable the judgment debtor to get an order of stay of the appellate court. This view of mine is supported by the decision of the Hon'ble High Court of Karnataka in the case of Lyallpur Rubber Mills V/s Sri.Tulsi Industries through its Partner and another reported in ILR 2006 Kar.3909, wherein the Hon'ble High Court at para 7 and 8 of its judgment held as under:

7. Having heard the learned counsel for the petitioner, what is required to be considered in this writ petition is; the power of executing court Under Order XXI Rule 26 of CPC. Order XXI Rule 26 of CPC reads hereunder:

(1) The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an Order to stay execution, or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment debtor has been seized under execution, the court, which issued the execution, may order the restitution of such property or the discharge of such person pending the result of the application.

8. From the reading of the above provision, it is clear that the executing court has got power to stay the proceedings for a reasonable time only under two circumstances; (i) to approach the same court which had passed the decree and to get an order of stay of operation of the decree or (ii) to enable a party to file an appeal before the Appellate Court and get the stay of operation of the judgment and decree of the trial court. Only under these two circumstances, Order XXI Rule 26 can be pressed into service. The intention of the legislature is to provide such a right to the execution court to enable the judgment debtor to file an appeal and to get an order of stay for a limited period and in such circumstances, the executing court can stay the proceedings for a reasonable time. If the judgment debtor has

already filed an appeal, it is for him to get an order to stay from the Appellate court by invoking Order XLI Rule 5 of the CPC. In other words, if an appeal had already been filed by the judgment debtor, an application under Order XXI Rule 26, cannot be pressed into service. But he can request the Appellate Court to grant the stay of operation of the judgment and decree of the trial court. In the instant case, in the application filed Under Order XXI Rule 26 of CPC, the judgment debtors have clearly stated that they have already filed an appeal before the District Judge, Jalandar and they also furnished the appeal number. When they have already filed an appeal before the District Judge, Jalandar, it was for the judgment debtors to request the District Judge, Jalandar to grant the stay of operation of judgment and decree of the trial court. Without doing so, they filed an application Under Order XXI Rule 26 of CPC before the executing court. Therefore, the said application was not maintainable. Even otherwise, considering the provisions of Order XXI Rule 26 of CPC, the executing court should have granted an order of stay only for a reasonable time to enable the respondents herein to get an order of stay from the Appellate Court. In the circumstances, this court is of the opinion that the order of the trial court has to be set aside.

7. The above principle of law is aptly applicable to the case at hand. In this case also the defendant/judgment debtor has already filed appeal before the Hon'ble High Court. When he has already filed an appeal before the Hon'ble High Court, it was for the judgment debtor to request the appellate court to grant the stay of operation of judgment and decree of this court passed in O.S.NO.49/2018. Without doing so, the judgment debtor has filed this application U/s.151 of CPC. Therefore, the application is not maintainable. Even otherwise, considering the provisions of Order 21 Rule 26 of CPC, the Executing Court should have granted an order of stay only for a reasonable time to enable the judgment debtor herein to get an order of stay from the Appellate Court. In this case already appeal period is expired and the judgment debtor has also

already filed appeal before the Hon'ble High Court. Therefore, at this stage this court being the Executing Court cannot pass orders staying the execution and operation of the judgment and decree passed in O.S.No.49/2018. Hence, the following:

ORDER

The application (IA.4) filed by the judgment debtor U/s.151 of CPC is hereby dismissed.

Senior Civil Judge & JMFC, Sedam.

Orders on IA No.3 U/s 151 of CPC

The judgment debtor has filed this application U/s.151 of CPC and sought to recall the commissioner warrant.

2. The SPA holder of judgment debtor has sworn to an affidavit in support of IA and stated that the judgment debtor/defendant preferred appeal in RFA No.200211/2024 and 200212/2024 on 17.12.2024 before the Hon'ble High court of Karnataka, Kalaburagi Bench. Hence, prays to allow the IA.

3. The decree holder has filed objections to IA and contended that the application is not maintainable. The appellate Court has not granted any stay order. Therefore, there is no reason to stay the second proceedings. Hence, prays to dismiss the IA.

4. Perused the records. Heard arguments.

5. The copy of the judgment and decree show that the decree holder had filed suit for specific performance against the judgment debtor in O.s.N.49/2018 on the file of this court and the same was decreed on 27.9.2024 directing the

defendant/judgment debtor to execute the sale deed within one month and also directed the decree holder to deposit the balance sale consideration amount of Rs.1,00,000/-. Since the judgment debtor failed to execute the sale deed the decree holder had filed this execution petition. It is on record that aggrieved by the judgment passed by this court in O.S.No.49/2018 the judgment debtor had already preferred Regular First Appeal in RFA No.200211/2024 on 17.12.2024. It is also on record that no stay order is granted in the said appeal.

6. This court by its order dated 10.1.2025 passed orders on the IA seeking the stay of this proceedings and declined to stay the execution and operation of the judgment and decree passed in O.S.No.49/2018. Apart from this the Appellate Court also has not granted any stay order. Therefore, there is no reason to recall the commissioner warrant. Hence, the following:

ORDER

The application (IA.3) filed by the judgment debtor U/s.151 of CPC is hereby dismissed.

For await report call on 18.1.2025.

Senior Civil Judge & JMFC, Sedam.