

**IN THE COURT OF THE II ADDL. CIVIL JUDGE
& JMFC., AT PANDAVAPURA**

DATED ON THIS THE 27th DAY OF JANUARY 2024

:PRESENT:

**Smt. Padma.M, B.A., L.L.B.,
II Addl. Civil Judge & JMFC.,
Pandavapura.**

Ex.No.48/2019

D.Hr : B.Bettegowda
(By Sri.C.M., Adv.,)

v/s

J.Drs : Sowbhagyamma and others
(By Sri.DTV for J.Dr No.1-Adv., J.Dr No.2 to 4 absent)

I.A.No.I

Applicant : Sowbhagyamma ----- J.Dr No.1

v/s

Opponent : B.Bettegowda ----- D.Hr

ORDER ON I.A.No.I

The J.Drs have filed this application under order 21 rule 29 r/w section 151 of C.P.C. for seeking to stay of the proceedings of this execution petition.

2. In support of her application, the J.Dr filed affidavit and stated that the D.Hr has filed a suit against the J.Dr in O.S.No.13/2014 for relief of Specific performance of the Sale Agreement and said suit has come to exparte decree in favour of the D.Hr. The D.Hr intention to grab the suit schedule property. Said documents are not executed by the J.Drs. The D.Hr has created a documents and furnished the wrong boundaries and obtained the decree in favour of the D.Hr. After receiving of the notice of the execution petition and enquired that, by that time, the J.Drs know about the original suit came to be decreed in favour of the D.Hr. Thereafter the J.Drs have filed a civil miscellaneous against the D.Hr in Miscellaneous No.1/2023 for seeking set-aside the exparte judgment. During the pendency of the said miscellaneous, the D.Hr has filed this execution petition. If proceed this execution petition, it will be caused to the J.Drs. Hence, prayed to stay the proceedings till disposal of the civil miscellaneous No.1/2023.

3. On the other hand, the D.Hr has filed a objection and stated that this I.A. is not maintainable either in law or on facts. The J.Drs have falsely stated the entire averments in his affidavit and further D.Hr submits that after receiving of the summons of the O.S. case, the J.Drs are not appeared before the court. J.Drs know about the original suit. Therefore the J.Drs have filed this petition to drag-on the proceedings, hence prayed to dismiss.

4. Heard the arguments on both sides.

5. The points that arise for my consideration are as follows.

1. Whether the stay order is necessary to resolve the real controversy between the parties?

2. What order?

6. I answer the above points are as follows.

Point No.1: In the Affirmative.

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

REASONS

7. Point No.1: I have gone through the application, objection and documents placed before the court. It is clearly disclosed that, the D.Hr has filed a suit against the J.Drs for relief of specific performance of the contract. Said suit came to be decreed in favour of the D.Hr. In the original suit, the J.Drs not appeared before the court, hence they placed exparte. The D.Hr has obtained the exparte decree. On perusal of the order sheet in civil miscellaneous No.1/2023, it is disclosed that the J.Drs have filed a miscellaneous petition against the D.Hr for relief of set-aside the exparte decree in O.S.No.13/2014. In the said civil miscellaneous, this D.Hr has absent, matter is posted for enquiry. Admittedly, O.S.No.13/2014 is exparte decree. The J.Drs are challenged the said exparte decree for filing of civil miscellaneous No.1/2023. Therefore if application is not consider, the purpose of civil miscellaneous petition will be defeat at the time of consideration of the objection of the D.Hr, he is directed to proceed with case for disposal of said civil miscellaneous petition, within the stipulated period, it will met the ends of justice, otherwise if the petition is ordered in favour of the J.Drs. The order will be excute, because D.Hr executed a decree as per law in execution petition and avoid the multiplicity of proceeding and considering the facts and circumstances of the case, the court consider the opinion that the J.Drs made out a ground.

Accordingly, this court answered above point No.1 in the Affirmative.

8. **Point No. 2:** For the above stated reasons, I proceed to pass the following order.

O R D E R

The application filed by the J.Drs under Order 21 rule 29 r/w section 151 of CPC IA. No.I is hereby allowed and thereby further proceedings of the execution petition is stayed only for a period of four months from the date of order. Within stipulated period, the J.Drs shall proceed with miscellaneous petition No.1/2023 for disposal in accordance with law.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and then pronounced on this the 27th day of January 2024)

**(Padma.M.)
II Addl. Civil Judge & JMFC,
Pandavapura.**

Orders pronounced in the open court
(vide separate Orders)

ORDER

The application filed by the J.Drs under Order 21 rule 29 r/w section 151 of CPC IA. No.I is hereby allowed and thereby further proceedings of the execution petition is stayed only for a period of four months from the date of order. Within stipulated period, the J.Drs shall proceed with miscellaneous petition No.1/2023 for disposal in accordance with law.

II ACJ & JMFC,
Pandavapura.