

**BEFORE THE COMMERCIAL COURT & II ADDL DISTRICT &
SESSIONS JUDGE, MYSURU, AT: MYSURU.**

Present: Sri.Hosamani Pundalik,
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

Dated this the 29th day of June 2022

Com.Ex.No.145/2021

Decree holder :

M/s TBS India Telematic and Biomedical Services Private Limited, A company incorporated under the Companies Act, 1956, having its registered office at 5th Floor, Arden Fair, Opposite to Bennignahalli Ring Road Flyover, Pai Layout, Near Tin Factory, Old Madras Road, Bengaluru – 560 016 repto. By its authorized signatory Mr.Justin Sebastian.

(By Sri.K.N.N, Adv.)

/vs/

Judgment debtor:

Arogya Yoga Samsthe (Suyog Hospital) A partnership Firm registered under the Indian Partnership Act, 1932, having its office at No.P/2, Dakshineshwara Road, E & F Block, Ramakrishnanagar, Mysuru. 570 022. repto. by its Partners Dr.S.P.Yoganna and Mrs.Sudha Yoganna.

(By Sri.M.B, Adv)

Order on I.A.**Third parties / Applicants :**

1. Dr.R.Rajendra Prasad S/o Dr.Ramegowda, aged about 40 years.
2. Dr.Seema Yoganna, W/o R.Rajendra Prasad, aged about 36 years.
3. Dr.Suyog Yoganna, S/o S.P.Yoganna, aged about 34 years.

All are partners of Arogya Yoga Samsthe No.P-2, Dakshineshwara Road, Ramakrishna nagar, Mysuru.

Respondent / Decree Holder :

M/s TBS India Telematic and Biomedical Services Private Limited, repled by its authorized person.

**Order on IA Under Order 21 Rule 50 under order 1
Rule 10(2) R/w.151 CPC**

This is an application filed by the third parties / Applicant No.1 to 3 claimed to be the partners of Judgment Debtor / partnership firm i.e., Arogya Yoga Samsthe, (Suyog hospital) as Objectors in the present execution petition in the interest of justice.

2. The case of the parties in brief is as under:

It is stated in the affidavit filed along with interim application by one Dr.R.Rajendraprasad that himself and other applicants came to know about the memorandum of settlement entered between the Decree holder and judgment debtor in Commercial Appeal No.52/2021 on the file of Hon'ble High Court of Karnataka in the firm meeting held very recently. Further it is stated in the affidavit that the very settlement entered between the Decree holder and judgment debtor in Commercial Appeal No.52/2021 on the file of Hon'ble High Court of Karnataka is against to the law of the land and the very settlement entered between by the judgment debtor is against to the ethics and the terms and conditions of the firm and the business. Further it is stated that he has questioned the judgment debtor, in the firm meeting about entering into a settlement without keeping the interest of the firm and the partners who have striven hard to build the hospital in the name and the style Suyog Hospital. Further it is stated that the decree holder had filed a criminal case against him and other partners under Section 138 NI Act, misusing the security cheques issued by him and other partners in favour of the Decree holder wherein the decree holder had filed a case against him in CC. No.15006/2021, on the file of 34th Additional Metropolitan Magistrate, Bengaluru and also filed another criminal case against the second applicant that is Seema Yogonna in CC

No.15008/2021, on the file of 34th Additional Metropolitan Magistrate, Bangalore, and another criminal case against the third applicant that is Dr. Suyog Yoganna in CC. No. 15007/2021, on the file of 34th Additional Metropolitan Magistrate, Bangalore. Further it is stated in the affidavit that the judgment debtor represented by its managing partner without keeping the interest of the partners and the firm have entered in to a settlement with Decree holder not asking the decree holder to withdraw the criminal cases filed against him and other partners in CC.No.15006/2021, 15007/2021 and 15008/2021 respectively on the file of 34th Additional Metropolitan Magistrate, Bengaluru. Further it is stated in the affidavit himself and other partners where upset about the attitude of the judgment debtor and its silence on the query. He state that himself and other partners decided to take necessary steps to challenge the illegal settlement entered between decree holder and judgment debtor in Commercial Appeal No.52/2021 on the file of the Hon'ble High Court of Karnataka, as the judgment debtor has not sought for withdrawal of the criminal cases filed against him and other partners by the decree holder in CC.No.15006/2021, 15007/2021 and 15000/2021 respectively on the file of 34th Additional Metropolitan Magistrate, Bangalore, wherein the said cases filed by the Decree holder are also with respect to the same equipments

supplied to the Suyog Hospital. Further it is stated in the decree holder and the judgment debtor shall include the clause in the settlement deed, that the decree holder shall withdraw the criminal cases filed by the decree holder against him and other partners in CC.No.15006/2021, 15007/2021, 15008/2021 respectively on the file of 34th Additional Metropolitan Magistrate, Bengaluru, in Commercial Appeal No. 52/2021 on the filed of Hon'ble High Court of Karnataka and then the decree holder is entitled to maintain this execution petition. Further it is stated that decree holder has initiated arbitration proceedings against the judgment debtor before Arbitrator and Conciliation Center, Bengaluru in A.C No.176/2021 without arraying him and other partners as party to the proceedings. Further it is stated in the affidavit that the decree holder has sought Rs.21,38,49,490/- in the said arbitration proceedings and further sought for repossession of the same equipments which is in question in this execution petition. He further state that when the arbitration proceedings is pending for consideration the very execution petition is not maintainable as the same is premature. He state that the decree holder has not made the applicants /objector who are the partners of Arogya Yoga Samsthe to the arbitration proceedings before Arbitrator and Conciliation Center, Bengaluru in A.C No.176/2021. Further it is stated that the non inclusion of the partners to the above

arbitration proceedings in A.C No. 176/2021 is bad in law and the settlement entered between the decree holder and judgment debtor is not binding on him and other partners and the firm. Further it is stated that the very settlement entered between the decree holder and judgment debtor is against to the principles of natural justice and law of the land. He state that the very settlement is against to the facts and circumstances of the case and also against to the terms and conditions of the partnership and hence the settlement is not binding on the partners and the firm. Hence the accompanying application, seeking this Hon'ble Court to permit the applicants to come on record as the applicants being the partners of the Arogya Yoga Samasthe are necessary parties to this execution petition. Further it is stated that if the accompanying application is allowed no hardship or loss would be caused to other side and on the other hand if the accompanying application is not allowed he will be put to great hardship and loss which cannot be compensated in terms of money and prayed to allow the application.

3. Per contra, the counsel for decree holder filed objection to the following effect:

It is contended that the instant application is filed by certain applicant claiming to the partners in the

Judgment Debtor partnership firm. Further it is stated that the application filed by the said Applicants is mischievous, vexatious and frivolous and ought to be summarily dismissed by the Court. Further it is stated that the application as filed is not maintainable in law and is nothing but an abuse of process and ought to be dismissed upon exemplary costs. Further it is stated that neither Order 1 Rule 10 nor Order 21 Rule 50 contemplate a party being permitted to be brought on record as a Judgment Debtor during execution proceedings. This Court being an executing Court, only has to power to enforce the Decree sought to be executed and is confined to the Decree and cannot go beyond the same to include additional parties. Further it is stated that the Decree Holder has not sought for any relief against the Applicants personally or against any property owned by the Applicants independently the Decree Holder has sought to enforce the Decree passed by the Hon'ble High Court of Karnataka in Commercial Appeal No.52/2021 under which the Decree Holder is entitled to delivery / possession of various equipments that it had proved to the Judgment Debtor firm. it is only these assets that the Decree Holder has sought delivery of in the present proceedings and thereafter, there is no question of any additional parties being

impleaded as no other property is sought to be attached or delivered by the Decree Holder. Further it is stated that for the sake of arguments, even if this Court were to overlook the defect in the instant application and consider the Applicants as objectors under Order 21 Rule 97, it is contended that any such objector must show an independent title or possession of an immovable property and cannot be someone claiming through or under the Judgment Debtor itself. In the present case, the Applicants are not setting up any independent right over the movable properties sought to be delivered to the Decree Holder as they are claiming to be partners of the Judgment Debtor firm. The proceedings initiated by the Decree Holder against each of the Applicants is in respect of dishonoured cheques issued by them in their capacity as guarantors for the Judgment Debtor and not as partners of the firm. Further the said proceedings are not in any way connected to the present proceedings and neither is the arbitration proceedings pending between the Decree Holder and Judgment Debtor. Further it is stated that the applicants claimed to be aggrieved by the settlement deed dated 18.9.2021 entered into by the Decree Holder and Judgment Debtor firm however no steps have been taken by them to challenge the same.

Further it is stated that this Court does not have any jurisdiction to adjudicate any alleged grievance of the Applicants against the settlement deed dated 18.9.2021 or the Judgment dated 21.9.2021 or the Judgment dated 21.9.2021 passed by the Hon'ble High Court of Karnataka in Commercial Appeal No.52/2021. Further it is stated that the Applicants are completely unconnected to the settlement deed dated 18.9.2021 and were neither parties to the proceedings in Commercial Appeal No.52/2021 or Commercial A.A.No.24/2021 initiated by the Decree Holder or Commercial A.A.86/2021 initiated by the Judgment Debtor. The property in respect of which delivery warrants are sought in these proceedings (being various medical equipments) belong wholly to the Decree Holder but are in the custody of the Judgment Debtor. There is not even a whisper of an allegations in the instant application or accompanying affidavit of the Applicants claiming any right, title or interest in the said property owned by the Decree Holder. Further it is stated that the Applicants have no locus standi to file application before the Court and the present application is nothing but a tactic being employed by the Judgment Debtor firm to avoid enforcement of the Decree passed

by the Hon'ble High Court of Karnataka and prayed to reject the application.

4. Thereafter, I have heard arguments advanced by the third party Applicants / partners of the judgment debtor firm (Suyog hospital) and that of the learned counsel for the decree holder.

5. The points that would arise for my consideration in this case are as under:

(1) Whether the application filed by the third parties applicants / partners of the judgment debtor partnership firm for impleading them as objectors in the present execution petition deserves to be allowed ?

(2) What Order?

6. My findings to the above points are as under:

Point No.1 :In the Negative

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

REASONS

7. **Point No.1** :- It is pertinent to note that the Decree Holder company has preferred commercial Appeal bearing Commercial Appeal No.52/2021 (AA) before the

Hon'ble High Court of Karnataka and there was a settlement between the parties as per settlement the Hon'ble High Court of Karnataka disposed off Appeal in terms of agreement entered into between the parties dated 18.9.2021. It is pertinent to note that as per clause 5 of the settlement the Appellant shall entitled to take back from the premises of the Respondent (Suyog hospital) at the convenience of the Appellant all the medical equipments supplied by it as detailed in schedule I on or before 13.11.2021. and as per clause II and V of the agreement the Respondent agreed in the event of default in any of the above 3 payments shown in clause 3 - (i)(ii)(iii) above the Appellants have continue to retain the enjoy the absolute ownership of the medical equipments listed in schedule II. Further it is agreed that however in the event of such default if any on part of the Respondent / Judgment Debtor to so pay the Appellant shall have right to reposses all the medical equipments listed in the schedule II.

8. It is pertinent to note that the Judgment Debtor neither complied with the terms of the settlement nor paid any amount to the Decree Holder. Under the circumstances the Decree Holder filed present execution petition for enforcement terms of Decree in Commercial Appeal No.52/2021. When the matter is posted for hearing on I.A.s the present third parties Applicants / partners of the

Judgment Debtor firm filed present application for impleading them as a objectors, questioning very terms of the agreement entered between the parties in Commercial Appeal No.52/2021 before the Hon'ble High Court of Karnataka and requesting him to implead them as an objector for questioning very terms of the agreement in Commercial Appeal No.52/2021.

9. It is pertinent to note that the third parties Applicants / partners of the Judgment Debtor partnership firm not claiming independent rights in the present petition. They are claiming rights through Judgment Debtors partnership firm. It is pertinent to note that there was a settlement between Decree Holder company and the Judgment Debtor partnership firm in Commercial Appeal No.52/2021, the Decree passed in Commercial Appeal No.52/2021 is not only binding on the firm, but also the said Decree binding on the partners of the firm. Therefore, the partners of the firm cannot be terms to be an objectors in the execution petition. The partners of the Judgment Debtor firm will be the only Judgment Debtors in the execution petition. Because as per the provisions of the Partnership Act the Decree Holder who obtained the Decree against the partnership firm entitled to execute the Decree not only against the firm but also against the all partners. Therefore, the application filed by the third parties / Applicant No.1 to 3

claimed to be the partners of Judgment Debtor / partnership firm i.e., Arogya Yoga Samsthe, (Suyog hospital) as Objectors in the present execution petition is liable to be dismissed. Because the third parties / Applicant No.1 to 3 not entitled to question the Decree passed in Commercial Appeal No.52/2021 passed by the Hon'ble High Court of Karnataka before this executing Court. Since the third parties / Applicant No.1 to 3 claimed to be the partners of Judgment Debtor / partnership firm i.e., Arogya Yoga Samsthe, (Suyog hospital) they may be termed as a Judgment Debtors not objectors in the present execution petition for execution of Judgment and Decree passed in Commercial Appeal No.52/2021 by the Hon'ble High Court of Karnataka as the said Decree binding on the all the partners of the firm. Therefore, the application filed by the third parties / Applicants No.1 to 3 for impleading them as objectors in the execution petition is liable to be dismissed. Hence, I answered **Point No.1 in the Negative.**

10. **Point No.2:-** In view of my findings on the above Point No.1, I proceed to pass the following:

ORDER

The application filed by the third parties / Applicant No.1 to 3 Under Order

21 Rule 50 under order 1 Rule 10(2)
R/w.151 CPC for impleading them as an
objectors is rejected.

In view of the facts and circumstances of
the case the parties are directed to bear
their own costs.

(Dictated to the Judgment Writer directly on computer and then
pronounced in the open court on this the 29th day of June 2022)

(Hosamani Pundalik)
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

