

KAMS080000532020



**BEFORE THE MOTOR ACCIDENTS CLAIMS
TRIBUNAL AT MYSURU.**
**(IN THE COURT OF PRINCIPAL SMALL CAUSES
AND SENIOR CIVIL JUDGE, AT MYSURU)**

PRESENT

Smt. VEENA N

B.A. L. LL.B.,

Principal Judge, Court of Small Causes

Dated this the 21st day of September 2023

EX/26/2020

BETWEEN:

Sri. Puttathayamma W/o. Borasiddaiah
R/at No.1912, 13th Cross, Ashokapuram,
Mysuru

Decree Holder

V/s

Sri. Byrappa S/o. Late Madaiah,
Aged about 50 years,
R/at No.192, 3rd Block,
Ramabai Nagara (Goruru), Mysuru

Judgment debtors

ORDER

This execution petition is filed for recovery of Rs.1,02,000/- as per the the decree passed by this court in SC No.13/2017 dated 19.12.2019.

2. The petition is resisted by the judgment debtor by filing objection statement wherein which it is contended that the judgment debtor has no

property of his own and he is not capable of paying any money towards decree amount and he has no means to satisfy the decree and as such the decree is not executable. It is further contended that the judgment debtor has no movable or immovable property and hence seeking attachment of property in the execution petition is not sustainable under law and decree holder knowingly well of these facts is trying to take coercive steps to harass judgment debtor and hence this execution petition is not maintainable and is liable to be dismissed.

3. Since the judgment debtor has raised plea of “no means”, this court has proceeded to hold enquiry as contemplated under law. Now the point that arise for my consideration is as hereunder :

POINTS

1. ***Whether the judgment debtor proves that has no means to satisfy the decree ?***
2. ***What Order ?***

4. Heard both counsels.

5. In order to prove the case, the decree holder examined herself as PW.1 and got marked Ex.P1 document. On the other hand the judgment debtor has not chosen to lead enquiry.

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:-** On perusal of records, it is apparent that the suit bearing No.SC 13/2017 was filed by the plaintiff against the defendant for

recovery of Rs.84,000/- with interest and defendant caused appearance and filed his written statement and after conclusion of evidence of both the parties, this court vide judgment dated 19.12.2019 has decreed the suit of the plaintiff with cost and the plaintiff is entitled for the recovery of Rs.84,000/- from the defendant with interest at 6% per annum and it is directed to the defendant to pay the decretal amount within two months from the date of judgment.

8. Since the defendant failed to satisfy the decree passed by this court , the present execution petition is filed for recovery of decretal amount along with interest and incidental charges.

9. During the pendency of the petition, in pursuance to the warrant issued, the judgment debtor caused appearance and raised plea of “no means” to satisfy the decretal amount. Hence the enquiry is held providing an opportunity to Jdr to establish his plea. In order to prove that judgment debtor has sufficient means, the decree holder got examined herself as PW.1 and she has in her affidavit deposed that, the judgment debtor has filed false objection stating that he has no means and he has no property of his own and is not capable to pay money towards decretal amount. But he has got house property bearing No.192, measuring 20 x 30 feet, block No.3, situated at Goruru Kopluru village, Mysore city. Hence the judgment debtor is liable to pay decretal amount in favour of decree holder.

10. In support of her evidence she has produced Ex.P1 which is the copy of gift deed dated 27.09.2012 which shows the property bearing House No.192, Block No.3 situated at Goruru Village, Kasaba Hobli, Mysuru Taluk measuring East to West 20 feet, North to South 30 feet is gifted in favour of judgment debtor by one Jogi Siddaiah S/o. Late Madaiah. During cross examination of PW.1 she admits that judgment debtor is suffering from age old ailments and

also admits that his children are having right over the said property. She denies that judgment debtor has no means to pay decretal amount.

11. At this point of time, it is worth to note that as per Order 21 Rule 40 of CPC “No doubt when the judgment debtor pleads no means, the execution court is bound to enquire into this contention before issuing a warrant of arrest under Order 21 Rule 40 of CPC”. In compliance to the said procedure, this executing court has provided an opportunity to judgment debtor to prove his plea, but the judgment debtor despite of raising plea as to no means has not chosen to appear before the court to lead enquiry on his behalf. So the evidence of decree holder and the document produced by her clearly shows the judgment debtor is in possession of immovable property and it is bequeathed in favour of judgment debtor and he is the owner of the said property. So under such circumstances, the contention raised by him that he has no means cannot be accepted. On the other hand, the conduct of judgment debtor in not leading enquiry on his behalf shows that the objection is raised in order to delay the execution of the decree. So the Jdr has failed to establish that he has no means to satisfy the decree. Hence in view of the reasons assigned so far, the aforesaid point No.1 is answered **in the negative**.

12. Point No.2:- The aforesaid Point No.1 is answered in the Negative and I proceed to pass the following:

ORDER

The objection raised by the judgment debtor that he has no means to satisfy the decree is hereby set aside.

The Decree holder shall take appropriate steps to execute the decree.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on 21st day of September 2023).

(VEENA. N.)
PRINCIPAL JUDGE,
Court of Small Causes
MYSURU.

ANNEXURE

List of witnesses examined on behalf of decree holder

PW.1 Smt. Puttathayamma

List of witnesses examined on behalf of judgment debtor

Nil

List of documents marked on behalf of decree holder

Ex.P1 Copy of gift deed

List of documents marked on behalf of judgment debtor

Nil

(VEENA. N.)
PRINCIPAL JUDGE,
Court of Small Causes & MACT.,
MYSURU.