

KAMS200002502023



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
JMFC, H.D.KOTE**

Dated This 17th day of February 2026

PRESENT:

Sri. Mahesh B.T.,
B.Com., LL.M.,
Senior Civil Judge and JMFC,
H.D.Kote

Ex.No.31/2023

Plaintiff :- Sri. Siddaramegowda

V/s

Defendants :- Rajamma and Others

I.A.No.IV

Applicant :- Siddaramegowda
... Jdr No.1

V/s

Opponents :- Rajamma and Others
.... Dhr

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**ORDERS ON I.A.No.4 FILED BY THE JDR NO.1 U/O
21 RULE 29 R/W SEC.151 OF CPC**

The Judgment Debtor No.1 has moved this application to stay the proceedings of the Execution Petition.

2. In the affidavit with the application, the judgment debtors has stated that, the Decree Holder has filed a suit against the Judgment Debtor for the relief of recovery of money. As per the Judgment and Decree in OS.No.46/2021, the Decree Holder has filed the instant execution petition against them and this Hon'ble court was also attached the property of the Judgment Debtor and also ordered for the auction sale. Further it is stated that, Decree Holder has filed the O.S.No.46/2021 against the one Puttadasa and Rajamma on 20.04.2021 and during the trial 1st defendant i.e., the father of the applicant died due to Corona on 08.05.2021. Thereafter Decree holder has brought the Legal heirs of the Puttadasa, by taking the public notice at the Newspaper and placed 2nd defendant has exparte. Thereafter, defendant No.1(a) and 1(b) was brought on record and these defendant No.1(a) and 1(b) also filed a vakalath on 09.11.2022. Meantime, defendant No.2 had face the heart problem, hence these defendant No.1(a) and 1(b) was able to filed a written statement. Thereafter, this court was pleased to pass the Judgment in favour of the plaintiff. Now, they have also filed the Miss.P.1/2024, which is pending before the this court. Hence, it is prayed to allow the application.

3. The counsel for Decree Holder has filed objection to the application and it is contended that, the Decree holder had filed a suit against the Judgment Debtors for recovery of money against the registered mortgage of suit

schedule land lent to Late Puttadasa husband of the judgment debtor No.3 and father of rest of the judgment debtors vide O.S.No.46/2021 on the file of this Court and the said suit was decreed on 21.01.2023 in favour of this Decree Holder directing the judgment debtors to pay the decretal amount, with up to date future interest within 3 months from the date of judgment and get release of mortgage of suit property.

4. Further it is contended that, the judgment debtors failed to obey the orders of this Court the Decree holder filed the above execution petition on the file of this Court seeking execution of the decree. That in order to frustrate the decree, to drag on the issue and to harass the Decree Holder, the judgment debtors who intentionally kept themselves away from the proceedings of the original suit for more than two years have filed a Miscellaneous Petition vide Misc.Appeal.No.01/2024 after knowing that the execution petition was filed. That the judgment debtors are aware that summons were issued to them on 22.10.2021 and also paper publication was given duly notifying them of the suit filed against them for recovery of money vide OS No.46/2021 and they kept themselves away from the proceedings intentionally to frustrate the claim of the Decree Holder as per the decree.

5. Further it is contended that the said Miscellaneous application is under adjudication by this Court. That the Judgment Debtor who are anxious to file the said miscellaneous application ignored to file their objections to

the Execution petition intending to drag on the issue. That on knowing that the auction of the suit property was ordered and the decree was executed the Judgment Debtors rushed to file this application. That Judgment Debtors have no reason to stall the execution proceedings taking alibi of false sickness misleading the Court despite aware of the trial held with due summons and paper publication ignoring more than reasonable opportunity provided to them.

6. Further it is contended that, the Judgment Debtors on receipt of summons on knowing filing of the suit and the facts of the suit engaged counsel of their choice and ensured their representation in the suit through their counsel. That they chose to abstain and Judgment Debtors was treated *exparte* and rest of the Judgment Debtors intentionally did not file written statement despite reasonable opportunity and even their counsel did not come forward to proceed with evidence and it appears that they intentionally kept themselves away from the proceedings to frustrate the possible decree that would be obtained lawfully and to file a Miscellaneous petition buying time abusing provision of law and to harass the Decree holder and to frustrate the decree. That it is travesty of truth that the Judgment Debtors who received summons who read the advertisement of the suit filed against them appeared before the Court and engaged their counsel and intentionally abstained from further participation and now claiming innocence have filed this

frivolous application based on no ground. That it is not at all innocence or ignorance and it is height of arrogance exhibiting scant respect to the judicial proceedings. The Judgment Debtors do not deserve any sympathy and the application is devoid of any merit.

7. Further it is contended that the above application is filed to drag on the issue despite their willful abstinence from the court proceedings in the original suit having received the summons of the court and being well aware of the suit proceedings with malafide intention of delaying the execution of the decree and to frustrate the justice given to the Decree Holder by the court. That the Judgment Debtors aware of the consequences of this Execution proceedings have intentionally chosen to file this frivolous application to drag the issue to possible extent by abusing the provision of law and to evade their responsibility of repaying the debt honoring the decree of the court. That they intend to derail issue of enforcing the decree aiming to delay dispensation of justice and to stall the execution proceedings. Hence, it is prayed to dismiss the application.

8. In view of rival contentions of the parties, the following point emerge for consideration :-

1. Whether the Judgment Debtor No.1 made out a ground to stay the further proceedings of this Ex. Petition?

9. Having heard the arguments of the learned counsel for Decree Holder and the Judgment Debtor, I have scrutinized the application in the backdrop of materials made available. Now, my answer on the point is in the “Negative” for the reasons herein after assigned :-

REASONS

10. The application filed by the applicant to stay the execution petition, since they also filed Miscellaneous petition No.1/2024. Further they have taken the contention that, during the trial in O.S.No.46/2021 their father expired and meantime their mother was not feeling well. Hence, they could not proceed with the case. Thereafter, this court was pleased to pass the Judgment against the Judgment Debtor. Hence, they have come up with the instant application to stay the proceedings. Per contra, the Decree holder has filed the detailed objection contending that, in spite of having all the knowledge willfully defendants neglected the court notice and in spite of appearing before the court they have not filed the written statement and remains absent and this court was pleased to pass the Judgment in favour of the plaintiff. Now, the applicant observing the court proceedings has come up with the instant application only to escape from their liability.

11. On going through the Judgment and Decree and the documents it can be seen that, the father of the applicant as borrowed amount from Judgment Debtors meantime

he has expired. Now, it is the duty of the Judgment Debtors to return the amount to the Decree Holder. Further it is to be noted here that, it is the Judgment Debtor has to be very caution enough to take all the necessary steps to contest the case and to defend themselves. In the instant case the defendants have taken lethargic steps and not contested the case. Now, they have come up with the Miscellaneous petition meantime they have filed instant application to stay the proceedings, which will be once again agony to the Decree Holder. Moreover, judgment Debtor has failed to prove their case. Further it is to be noted here that, this Judgment Debtor have all the opportunity to prove their case if really they are entitle. Further they can also claim recovery from the Decree Holder if really they succeed in their case. Hence, without showing any leniency this court, Hence, I proceed to pass the following:-

ORDER

IA No.IV filed by the applicant Judgment Debtor No.1 under Order 21 Rule 29 R/w 151 of CPC., is dismissed.

(Dictated to the Stenographer, transcribed by her on computer, revised, corrected and then pronounced by me in the open Court on this the 17th day of February, 2026)

Sd/-
(Mahesh.B.T)
Senior Civil Judge & J.M.F.C
H.D.Kote