

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C.,  
H.D.KOTE**

Present: NATARAJ YADAV .S, M.B.A., LL.B.,  
Senior Civil Judge & J.M.F.C.,  
H.D.Kote.

Dated, this the 08<sup>th</sup> day of September, 2022

**EX.No. 32/2021**

DH/s : Mahadevamma  
W/o Mahadevanayaka,  
Aged about 42 years,  
R/at Thoravalli Village,  
Kasaba Hobli,  
H.D.Kote Taluk, Mysuru District.

(By Sh.M.N.Ravishanakar., Advocate)

-V/s-

JD/s :1. Govindanayaka  
S/o Krishnayaka,  
Aged about 42 years,  
2. Sharadamma  
W/o Govindanayaka,  
Aged about 32 years,  
Both are R/at Hulikura Village,  
Kasaba Hobli,  
H.D.Kote Taluk, Mysuru District.

(By Sh. M.Chikkaswamy., Advocate)

**PARTIES TO I.A.I**

Applicant/ Decree holder : Mahadevamma

V/S

Opponent/ Judgment debtor no.1 : Govindanayaka

**ORDER ON I.A.No. I**

This order of mine shall dispose of an application filed U/o 21 rule 37 CPC for issuance of arrest warrant against the Judgment debtor no.1 and detain him in civil prison.

2. A show cause notice U/o.21 rule 37 CPC was issued to the judgment debtor no.1 seeking his explanation why he should not be committed to prison, the judgment debtor no.1 appeared before the Court through his counsel, however he has not filed his counter to the said application.

3. The case was posted for enquiry on said application as contemplated U/o 21 rule 40 of CPC. The decree holder examined himself as PW-1. The judgment debtor no.1 did not opt to lead evidence.

4. I have heard the arguments on behalf of Ld.counsel for decree holder. Perused the records and given my thoughtful consideration on it.

5. The Ld.counsel for the decree holder has submitted that the suit for recovery of money on the basis of the decree passed in S.C.no. 19/2013 filed in the year 2013 and the suit was allowed vide Judgment and decree dated 19.02.2021. Even after more than one year of the obtaining of the decree, the decree holder is not in a position to enjoy the fruits of the decree. The decree has attained the finality. It is not in dispute that no appeal has been preferred challenging the correctness of decree passed. Thus, the decree passed in S.C.no. 19/2013 has attained the finality. The judgment debtor have not paid the single penny towards the petition amount despite having sufficient income and opportunities granted by the court. Decree holder has led evidence on record to show the judgment debtor no.1 has refused or neglected to pay the balance decree

amount despite having means. The evidence of decree holder remained uncontroverted and thus there is no reason to disbelieve it. The judgment debtor no.1 is taking the court to the jolly ride which cannot be permitted. Accordingly, prays to allow the application and issue an arrest warrant against the judgment debtor no.1 and detained him in the civil prison till the recovery of petition amount.

6. The perusal of the record reflects that the present petition has been filed for the recovery of an amount of Rs.31,411/- as per the decree passed in S.C.no. 19/2013 dated:19.02.2021. Admittedly the judgment debtor no.1 has not paid any amount towards the petition amount till this date though sufficient opportunity granted for the past one year. The decree holder has averred that the judgment debtor no.1 despite having sufficient means is willfully neglecting to pay the petition amount. She has filed an affidavit to that effect stating that the judgment debtor no.1 is an agriculturist having sufficient income or even otherwise he being considered as coolie he is earring not less than Rs. 15,000/- per month as per Karnataka Minimum Wages Act. The evidence of decree holder remained uncontroverted and it clearly discloses that the judgment debtor no.1 is a man with means and he is not a man without means even considered as a coolie and he is willfully neglecting to pay the award amount. Further the report filed by the court Amen reflects that judgment debtor no.1 possesses valuable movables and he has obstructed for attachment of it. Thus it is clear that the judgment debtor no.1 is a owner of valuable properties, on the face of it, it is clear that there is once the decree has become final, he has to obey the decree.

7. It is also relevant to observe that despite the service of the show cause notice on the judgment debtor no.1 he neither appeared before the court

nor filed objections and not entered the witness box to disprove the contention made by the DHr in his petition. It was obligatory upon the judgment debtor no.1 to remain present before the court & answer why he should not be committed to civil prison or to lead evidence. By his failure to do so, he brought upon himself the consequences provide by sub rule 2 rule of rule 37 of order 21. By observation finds support from the decision between the parties titled as K.N.Ganappa Vs A.M Subramanya Mudaliar, 100 L.W.306.

8. In view of the above discussion and circumstance of the case I am of the opinion that the judgment debtor no.1 had willfully refused or neglected to pay the remaining decree amount despite having means and the law must take its course. In my opinion, such deliberate violation of the award deserves to be dealt with sternly and thus the Judgment debtor no.1 deserves to be detained in civil prison. In these circumstances, I proceed to pass the following;

### **ORDER**

**The application filed by decree holder U/o 21 rule 37 CPC is hereby allowed and no order as to the cost.**

**Consequently the Judgment debtor no.1 directed to be detained in civil prison. For this purpose non billable warrants shall be issued against him if subsistence allowance is deposited by the decree holder.**

**Call on: 01.10.2022**

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 08<sup>th</sup> day of September, 2022)

Senior Civil Judge & J.M.F.C  
H.D.Kote