

**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 17<sup>th</sup> day of November, 2022

**EX.No. 45/2020**

DH/s : R.Chandrashekar  
S/o Rajachar,  
Aged about 55 years,  
R/at No. 784, Lalbandh Street, Hunsur Town,  
Hunsur Taluk, Mysuru District.  
  
(By Sh.B.S.Sangameshwara., Advocate)

-V/s-

JD/s : P.Gopalakrishna  
S/o Late. Chikkannachari @ S.P.Papachari,  
Aged about 48 years,  
R/at No. 64, Parasaihnahundi, Srirampura,  
Mysuru City, Mysuru District.  
  
(By Sh G.N.Narayanagowda., Advocate)

**PARTIES TO I.A. II**

Applicant/ Decree holder : R.Chandrashekar

V/S

Opponent/ Judgment debtor : P.Gopalakrishna

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

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 and  
detain him in civil prison.

2. A show cause notice U/o.21 rule 37 CPC was issued to the judgment debtor seeking his explanation why he should not be committed to prison, the judgment debtor 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 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 bearing no. 96/2016 was filed for recovery of money on the basis of the agreement to sell dated 22.06.2010 and the said suit was ended in a compromise and a compromise decree was passed on 25.04.2019 wherein the JDr has agreed to pay Rs. 28,36,500/- as refund of earnest money. The cheques issued by the JDr for the payment of said decretal amount was not encashed for want of sufficient funds in his bank account. The JDr along with interest has to pay Rs, 36,88,953/- out of which he has paid only Rs. 5,00,000/- The JDr yet to pay Rs.31,88,953/- to the DHr. Even after more than three years 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. The judgment debtor has paid Rs. 4,00,000/- and Rs. 1,00,000/- on 29.03.2021 and 05.04.2021 respectively and thereafter not paid 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 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 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 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.36,88,953/- as per the compromise decree passed in suit no. 96/2016 on 25.04.2019. Admittedly the judgment debtor has paid Rs. 5,00,000/- in toto till the month of April 2021 and thereafter he has not paid any amount towards the petition till this date though sufficient opportunity granted for the past nineteen months. The decree holder has averred that the judgment debtor despite having sufficient means is willfully neglecting to pay the petition amount. He has filed an affidavit to that effect stating that the judgment debtor is a business man having sufficient income and also owning valuable sites at Saragur. The evidence of decree holder remained uncontroverted and it clearly discloses that the judgment debtor is a man with means and he is not a man without means and he is willfully neglecting to pay the award amount. Further the documents placed on record by the DHr also reflects that he possesses both valuable movable and immovable properties . Thus it is clear that the judgment debtor 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 though appeared before the court through his counsel has not 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 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 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 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 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: 12.12.2022**

(Dictated to the Stenographer directly on computer, corrected and then pronounced by me in the open court on this the day of 17<sup>th</sup> day of November, 2022)

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