

Order on I.A's under Order XXI Rule 35(1) R/w. Sec. 151 of the
CPC and I.A under Sec.151 of the CPC

The counsel for the Lrs of the Dhr has filed these applications seeking the issuance of the delivery warrant with respect to the suit schedule property and to direct the Superintendent of Police, Ramanagar or their officers to assist the court staff/bailiff/s in executing the judgment and decree in O.S.No. 38/1983 and deliver physical possession of the suit schedule property in favor of the Lrs of the Dhurs, by removing obstructions, if any, during the execution of the decree.

2. In the affidavits sworn in support of the present applications, the Dhr No.1(a) has sworn that, they have filed this application in pursuance of the judgment and decree passed in O.S.No38/1983. He has also narrated in detail about the various legal proceedings in respect of the petition schedule property which have taken place among the parties since 1983 to 2022. It is further sworn that on 12-07-2012, this court was pleased to dismiss the objections/written statement filed by the Jdr No.6 and office was directed to issue delivery warrant for taking possession of the suit schedule property in order to deliver the same to them. Jdr No.6 filed R.A.No.55/2012 challenging the aforesaid order which came to be dismissed vide judgment dated 20-03-2013. Subsequently, the Jdr No.6 filed RSA No. 633/2013 challenging the said judgement dated 20-03-2013 before the Hon'ble High Court of Karnataka. After hearing both the sides, the Hon'ble High Court of Karnataka was pleased to dismiss the same by its judgment dated 5-4-2022. The Jdr No.6 challenged the same before the Hon'ble Supreme Court of India in SLP No. 29223/2022 which also came to be dismissed on the very first date of hearing.

3. That, already this court had issued delivery warrant for the delivery of possession of the suit schedule property to the DhRs and also issued necessary directions to the SP, Ramanagar to provide assistance in execution of the delivery warrant by its order dated 29-09-2018. Since the records of

the case were before the Hon'ble High Court of Karnataka in RSA No.638/2013, the said order dated 29-09-2018 could not be implemented. There is a similar affidavit sworn in support of the applications filed by the Lrs of the Dhr seeking police help in order to execute the judgment and decree. Hence, by allowing these applications, no loss or hardship is going to be caused to the other side and on the other hand, by rejecting the same, they would be put to loss and hardship. Hence, the applications.

4. Heard the learned counsel for the Lrs of the Dhr and perused the materials on record.

5. The learned counsel for the Lrs of the Dhr has filed memo with copies of the judgment of the Hon'ble High Court of Karnataka in RSA No.638/2013 dated 5-4-2022 and of SLP No. 29223/2022 dated 30-09-2022. The aforesaid orders go to show that the appeals preferred by the JDR No.6 have been dismissed by the Hon'ble High Court of Karnataka as well as by the Hon'ble Apex Court.

6. The record reveals that, upon receipt of records from the Hon'ble High Court of Karnataka, though this court issued court notice to all the parties, the presence of Jdrs could not be secured. In the meanwhile, the counsels for the Dhr No.1(a) to 1(c) have come up with these applications. In view of the dismissal of the RA, RSA and the SLP filed by the

Jdr No.6 and as of date, there being no further stay by any other forum to execute the judgment and decree passed by this court in O.S.No. 38/1983, this court, being the executing court has no other option except to execute the judgment and decree passed in O.S.No.38/1993 as per law. Moreover considering the long standing legal battle fought between the parties and considering the sensitivity involved in the matter, it is considered just and proper to provide necessary police help to execute the delivery warrant. Hence, the following:-

ORDER

The I.A's filed by the LR's of the D.Hr under Order XXI Rule 35(1) R/w. Sec. 151 of the CPC and I.A under Sec.151 of the CPC are hereby allowed.

Office is directed to issue Delivery warrant and also direction to the PI of Bidadi Police Station through SP, Ramanagar to assist the court bailiff to execute the delivery warrant as per the order of this court by 05-11-2022.

12-10-2022.

Pri.Senior Civil Judge & CJM,
Ramanagar.