

28.10.2011.

O R D E R

The JDr has filed an application u/o 47 rule 1 CPC to review the order dated 25.6.2011. In the affidavit it is stated that the JDr was not intimated about payment of balance consideration and the DHr has not complied the terms of decree and accordingly prays for review of the order.

2. The DHr has filed objections stating that there is no merits in the application and prays for rejection of application.

3. Heard the arguments.

4. The points that arise for consideration are:-

1. Whether the JDr has made out grounds for reviewing the order dated 25.6.2011?

2. What order?

5. My answer to the above is in the negative, for the following:-

R E A S O N S

6. Point No.1:- The present Execution petition is filed for executing the Judgement and Decree passed in O.S.No.173/2001. The said suit is decreed for the relief of specific performance of the contract. Against the said Judgement and decree the JDr has filed an appeal in RSA No. .812/2007 and the parties have compromised the matter before the Hon'ble High Court. As per the terms of the decree passed by this court the defendant was directed to receive balance sale consideration of Rs. 1, 31, 950/- within 3 months and to register sale-deed. The compromise before Hon'ble High Court disclose that the JDr has agreed to pay a sum of Rs.40 lakhs within 6 months to the DHr. On condition of fulfillment of said condition the Judgement and Decree is set aside. It is further ordered by Hon'ble High Court that in the event of JDr failed to deposit the amount the Judgment and Decree passed by this court shall stand. In this regard it appears that the JDr has not complied the said directions and under taking. It also appears that the time was extended by Hon'ble High Court till 3.8.2009. The JDr has not deposited the amount and accordingly the present Execution petition is filed. The learned counsel for the JDr submits that DHr has not complied the terms of decree. He relies on a decision reported **in ILR. 2008 Kar. 2891 (Onkarappa Chandrappa**

Biradhar V/s Dhareppa). The Hon'ble High Court in that decision has confirmed the orders of Trial Court wherein the Trial Court has not accepted the claim of the plaintiff for making the payment after prescribed period. The said citation is not applicable to the present set of facts as the decree passed by this court directs the JDr to accept the balance and to execute sale-deed. The JDr himself has failed to comply the terms of the compromise file before Hon'ble High Court. Accordingly the argument that DHr has not complied the directions etc are without any merits. This court has accepted the balance amount to be deposited looking in to the facts and circumstances of this case and after considering the fact that both the parties have filed compromise petition before the Hon'ble High Court. The Dhr some times takes time for searching deposit register to verify whether Jdr has made any deposit etc. It appears that the Decree Holder has not deliberately filed this Execution petition after some time but the same is filed after failure on the part of the JDr to comply the terms of compromise petition. Accordingly the orders passed by this court directing the office to receive balance sale consideration requires no review. It is the duty of Advocate or the litigant to appear before the court on the date of hearing. The order dated 25.6.2011 was passed on the date of hearing. Accordingly the grounds urged in the application are without

any merits and accordingly the point is answered in negative.

7. Point No.2:- In view of the findings on point -1, I proceed to pass the following :-

O R D E R

The application filed by JDr u/o 47 Rule 1 of CPC is dismissed with costs.

Office to comply direction dated 17.3.2011 after verifying the stay register.

Call on 24.11.2011.

Addl. Civil Judge, Ramanagara.