

IN THE COURT OF THE PRL.CIVIL JUDGE & JMFC.,
AT CHANNAPATNA

Present: Sri. S. NATARAJ. MBA,LL.B.,
Prl. Civil Judge & JMFC, CHANNAPATNA.

Dated this the 20th day of February 2020

Ex.22/2016

Decree Holder:

Sri. N. Kemparaju
S/o K. Nagaraju
Aged about 25 years,
R/a: 3rd cross,
Kodandarama Street,
Church Road,
Channapatna Town,
Ramanagara District.

(By Sri. Bhojgowda., Adv.)

Vs.

Judgement Debtor :

1. Sri. Nagaraju,
S/o Late Narasimha Upadya,
Aged about 60 years,
Managing Partner,
M/S Vybhava Finance
Corporation Ltd.
R/a: No. 2108/10, 8th cross,
Kuvempunagar,
Channapatna Town.

2. Sri. Eshwar Raju.L,
S/o Late Toys Lingaiah,
Aged about 58 years,
Partner,
M/S Vybhava Finance
Corporation Ltd.
R/a: No. 2194, 3rd Cross,
Kuvempunagar,
Channapatna Town.

3. Sri. B. Manjunatha,
S/o Late Borappa,
Aged about 55 years,
Partner,
M/S Vybhava Finance
corporation Ltd.
R/a: No. 2234/3, 1st Cross,
Kuvempunagar,
Channapatna Town.

4. Sri. Y.R. Venkataramu,
S/o Y.V. Ramaswamy,
Aged about 59 years,
Partner,
M/S Vybhava Finance
Corporation Ltd.
R/a: No.2645, 6th Cross down,
Vivekananda Nagara,
Channapatna Town.

(By Sri. S. Shivashankara, Adv. for
JDR No.1, Sri. K.L Prabhakar, Adv.
for JDR No.2 & 4, Sri. S.V.Srinivasan,
Adv. for JDR No.3 & 5)

PARTIES IN I.A. NO.1

Opponents/ DHR : Sri. N. Kemparaju

V/S

Applicant/ /JDR : Sri. Nagaraju and others

ORDER

Vide this common order I shall dispose off two applications which have been moved by applicants/ JDRs under section 10 r/w sec. 151 CPC praying to stop the proceedings till the disposal off the

appeal bearing No.14/2016 and sec.151 CPC praying to recall attachment warrant of movables issued against JDRs.

2. It is averred in the applications that the DHR had filed a suit bearing No.154/2009 against the JDRs for the relief of recovery of the money and the said suit came to be decreed on 08.10.2015. The JDRs preferred appeal against the aforesaid judgment and decree before the Hon'ble Civil Judge (Sr.Division), Channapatna and it is spending for adjudication. The DHR having the knowledge about the appeal is taking coercive steps for the recovery of the suit claim. It is further averred that similar suits were filed against the JDRs by the DHR before the Hon'ble Civil Judge (Sr.Division) Channapatna which came to be decreed. The JDRs preferred appeal against the judgment and decree passed in the said suits before the Hon'ble District and Session's Judge, Ramanagara and all the appeals came to be decreed. This clearly shows that there is no money transactions between the DHR and JDRs as alleged by the DHR. There is likelihood to succeed in the appeal. In view of the pending of the appeal the present execution petition cannot be prosecuted or in other words till the disposal of the appeal the present proceedings has to be stayed. If present proceedings are not stayed and the attachment of movables warrant is not recalled it will cause irreparable injury and mental agony which cannot be compensated in terms of money to JDRs. On these grounds it is prayed to stayed the proceedings.

3. Per contra the DHR filed objections contending that the application is not maintainable either in law or facts. The present applications are filed only with an intention to delay the fruits of the decree. Mere filing the appeal is not a ground to stay the

present proceedings. Furthermore, the JDRs had not obtained the stay of the decree before the appellate court by invoking order 41 Rule 5 of or 41 Rule 6 of CPC till this date. To add, the JDRs had not deposited any part of the suit claim or offered surety to the satisfaction of the court to stay the present proceedings. These circumstances also disentitle the JDRs from the relief sought. All other averment were denied and it was prayed for dismissal of the application with exemplary cost.

4. I have heard the arguments of the Ld. Counsels of the both the parties and perused the records.

5. The Ld. Counsel for the DHR submitted that the suit filed by the plaintiff has been decreed. That being so DHR cannot be deprived of the suit of the decree. The further proceedings of the execution case cannot be stayed till the disposal of the RA. He has further submitted that power under section 10 CPC has to be exercised sparingly. It is further submitted that if the JDRs succeeds in the RA they can get the money back by the principle of restitution. As such, no prejudice will be caused to the DHR. Thus it is highly inequitable to deprive of the decree holder of the fruits of the decree on the mere plea of pending appeal.

6. Per contra the Ld.counsel for the JDRs submitted that the JDRs filed RSA before the Hon'ble Civil Judge (Sr.Division) Channapatna challenging the judgment and decree passed by this court. The JDRs are not liable to pay any amount. In the event the further proceeding for the execution case is not stayed, the JDRs suffer irreparable injury.

7. On the anvil of the aforesaid arguments canvassed by both the parties, the case of the JDRs may be examined.

8. The JDRs have submitted that they had filed the RA before the Hon'ble Civil Judge (Sr.Division) Channapatna challenging the decree passed by this court in suit bearing No.13/2009 in decreeing it. The question does arise as to whether the present proceedings shall be stayed till the disposal of the appeal.

9. In *Judhistir Jena vs. Surendra Mohanty and another*, AIR 1969 ORISSA 233, this Court held :-

"xxx xxx xxx The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off- chance that another suit to set aside the decree might succeed. Such suits are also of a very precarious nature. The allegations therein ordinarily would be that the previous decree was obtained by fraud or collusion or that the decree was not binding on the present plaintiff as the transaction entered into by the judgment-debtor was tainted with immorality. These are all suits of un-certain and speculative character. Most of these cases are likely to fail the onus being very heavy on the plaintiff to establish fraud and similar charges. That being the position, a person should not be deprived of the fruits of his decree merely because suits of frivolous character are instituted and litigants are out after further series of litigations. The decree must be allowed to be executed and unless an extra-ordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not satisfied.

No hard and fast rule can be laid down in what cases stay would be granted or refused. But as has already been stated, a rigorous test is to be applied and in most of the cases prayer for stay is bound to be refused.xxx xxx xxx"

10. The filing of an appeal from a decree is, by itself, no bar to its execution, and execution may proceed unless it is stayed by an order of the Appellate Court or the Court which passed the decree (vide Order XLI, Rules 5 and 6). In the present case, the JDRs could have moved for the stay of the decree before the Appellate court. But they have failed to do so. This conduct of the JDRs disentitles the JDRs from the relief sought for in the present application. Further the conduct of the JDRs to prolong the case with an intention to delay the DHR from enjoying the fruits of the decree is evident from the records. The JDRs had filed similar applications to stay the proceedings under the various provisions of the statute which came to be dismissed by my Ld. Predecessor with well reasoned order which admittedly attained finality.

11. From the above discussions and observation it appears that the contention of the JDRs has no basis. This court has granted adequate opportunity to the JDRs toward off execution proceedings but they did not avail of the opportunity. If as a matter of fact they succeed before the appellate court restitution proceedings are available to them. Thus in the considered opinion of this court the applications are without merits and deserves to be rejected with exemplary costs. For the collective reasons I proceed to pass the following.

ORDER

I.A'S filed by applicants/ JDRs under section 10 and 151 of Civil Procedure Code are hereby dismissed with costs of Rs.1,000/- each.

Office is directed to reissue attachment warrant of movables if P.F. paid.

Call on 24.03.2020.

(Dictated on line computer to the stenographer, computerized by her, corrected, then signed by me and pronounced in the open court on this the 20th day of February 2020)

Sd/-
(Nataraj.S)
Prl. Civil Judge & J.M.F. C.
Channapatna.