

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

PRESENT:SRI.MAHENDRA.M B.A, LL.B.,
C/C Addl.Civil Judge & JMFC,
Channapatna.

Dated this 3rd day of June-2021

Ex.No.33/2016

DECREE HOLDER : Sri.V.K.Andanaiah,
-V/s-

JUDGMENT DEBTORS: Sri.Venkataramanaiah And Another

I.A.No.V

APPLICANT

DECREE HOLDER : Sri.V.K.Andanaiah,
S/o Kukkuraiah,
Aged about 39 years,
R/at Virupasandra Village,
Virupakshipura Hobli,
Channapatna Taluk,
Ramangara District.

--V/s--

OPPONENT /

JUDGMENT DEBTORS: 1. Sri.Venkataramanaiah,
S/o Late Venkataiah,
Aged about 60 years,
2. Smt.Kumari,
W/o Late Venkataramanaiah,
Aged about 53 years,
Both are R/at Appagere Village,
Channapatna Taluk,
Ramangara District.

ORDERS ON IA.No.V

The learned counsel for the JDR's has filed an I.A No.V u/O 21 Rule 29 r/w.Sec.151 of CPC seeking stay the execution proceedings till disposal of R.A. No.24/2016.

2. The JDR No.2 has filed an sworn affidavit in support of I. A . No.V and stated that, the DHR has filed a suit for the relief of specific performance of contract. The JDR's have filed an appeal before Hon'ble Senior Civil Judge and JMFC., Channapatna in R.A. No.24/2016 against the judgment and decree in O.S No.80/2012. The DHR created the document and filed the said suit. This application is not allowed the JDR's will be put to irreparable loss and injury which can not be compensated. Hence prayed that allow the I.A No.V.

3. The DHR has filed the objection to IA.No.V and contended that, the application filed by the JDR's is not maintainable under the law. This petition is filed on 30.05.2016 and JDR No.2 has appeared on 30.06.2016 and since then the JDR's have been appearing before this court and all the proceedings are in their presence only. The JDR's on ealier occation have filed as application u/O 21 rule 26 of CPC the same was dismissed by this court on 06.10.2018. The appeal pending from long time. The present application is not maintainable. This court

have no jurisdiction to entertain this application. Hence dismiss the I.A. No.V.

4. Heard Both sides.

5. Now the following points are arise for consideration of this court:-

POINTS

1. Whether there is a grounds to stay the execution and operation of decree in O.S No.80/2012 pending disposal of R.A. No.24/2016?

2. What order?

6. This court has perused the materials available on record and this court answer the above points as follows:-

Point No.1: In the Negative

**Point No.2: As per final order
for the following:-**

REASONS

7. **Point No.1:-** The DHR has filed a suit against the JDR's for the relief of specific performance of contract. The said suit was decreed by this court. Thereafter the DHR has filed the present petition for enforcement of decree in O.S. No.80/2012. The JDR's filed an appeal in R.A.24/2016 before Hon'ble Senior Civil Judge and JMFC., Channapatna.

8. This court let us discuss about the provision u/O XXI Rule 29 of CPC. The said provision reads as follows:

Stay of execution pending suit between decree holder and judgment debtor:-

Where a suit is pending in any court against the holder of decree of such court or of a decree which is being executed by such court, on the part of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.

Provided that if the decree is one for payment of money, the court shall, if it grants stay without requiring security, record its reasons for so doing.

9. As per the above provision applicable only pending for another suit against JDR in respect of same subject matter. In the present subject matter the subsequents suit not pending only regular appeal is pending. In the present circumstances the execution court cannot stay the execution petition.

10. The counsel for the JDR's has relied upon one decision reported in 2015(1) KCCR 386 between Harshad K. Patel @

Harshad Bhai K.Patel V/s S.V. Srinivasa Rao. With great respect this decision not applicable to present facts and circumstances of the case.

11. In said circumstances no grounds to stay the execution petition. Hence this I.A No.V is not deserved to be allowed. **With these observations Answer the Point No.I in the Negative.**

12. **Point No.2:-** For the above reasons this court proceed to the pass the following:-

ORDER

**The I.A.No.V under order 21 rule 29
r/w.Sec.151 of C.P.C. filed by the JDR's is
hereby dismissed with cost of Rs.500/-.**

(Dictated to the Stenographer and transcribed by her, Order corrected and signed by me, then pronounced by me in the Open Court on this the 3rd day of June-2021).

**Sd/-
C/C addl.Civil Judge & J.M.F.C.
Channapatna.**

Order pronounced in open court

(Vide Separate Order sheet)

ORDER

The I.A.No.V under order 21 rule 29
r/w.Sec.151 of C.P.C. filed by the JDR's is
hereby dismissed with cost of Rs.500/-.

Sd/-

C/C Addl.Civil Judge & J.M.F.C.
Channapatna.