

ORDERS ON I.A.No.1

1. The Decree-holder has preferred this Execution Petition seeking to direct the Judgment-debtors to hand over the possession of the petition schedule property by virtue of the judgment and order passed by the Hon'ble High Court of Karnataka in RSA No.580/2017 dated 11/04/2023. It is contended that the Decree-holder had preferred a suit for declaration, possession and permanent injunction against the Judgment-debtors herein in O.S.No.22/2012 before this Court, which came to be dismissed vide judgment and decree dated 11/12/2014 and the same came to be challenged in R.A.No.2/2015, which also came to be dismissed and the judgment and decree in O.S.No.22/2012 was confirmed. Thereafter the Decree-holder preferred second appeal in RSA No. 580/2017 before the Hon'ble High Court of Karnataka, in which the Hon'ble Court was pleased to allow the appeal and set aside the judgments of the both the Courts below and also directed the Judgment-debtors herein to handover the possession of the petition schedule property to the Decree-holder within 3 months from the date of the order, failing which the Decree-holder is at liberty to take possession as per law and hence this petition. In the background of these facts, the Decree-holder has also preferred an application praying to issue delivery warrant.

2. Per contra, the application is resisted by the Judgment-debtors contending that the Judgment-debtors have challenged the judgment and order in RSA No. 580/2017 before the Hon'ble Apex Court in MA Diary No.32398/2023 and hence prays to dismiss the petition. That the Judgment-debtors had also preferred a Writ Petition in W.P.No.28428/2023 challenging the notice issued under this petition to the Judgment-debtors, which came to be disposed by the Hon'ble Court directing the Judgment-debtors herein to contest this petition by raising all grounds. Since the

Decree-holder has preferred this petition behind the back of the Judgment-debtors, they pray to dismiss the same.

3. Upon hearing and perusal of the materials placed on record, the short point that arises for the consideration of this Court is ***whether the Decree-holder has made out valid grounds to issue delivery warrant against the Judgment-Debtors to deliver the possession of the petition schedule property?***

4. This Court answers the aforesaid point in the ***Affirmative***, for the following:

REASONS

5. Admittedly this is an execution petition preferred by the Decree-holder to execute the judgment and order passed by the Hon'ble High Court of Karnataka in RSA No.580/2017. However it is the argument of the L/c for the Judgment-Debtors that the judgment and order in RSA No.580/2017 has been challenged before the Hon'ble Apex Court in MA Diary No.32398/2023. However the Judgment-Debtors have not placed on record any order passed by the Hon'ble Apex Court wherein the judgment and order in RSA No.580/2017 has been stayed by the Hon'ble Apex Court. Apart from stating that the MA Diary No.32398/2023 has been filed by the Judgment-Debtors, no other orders are placed on record as on date. However in view of filing of the said MA Diary No.32398/2023, the Judgment-Debtors cannot take advantage of the same and stall the execution proceedings without there being any order of stay against the judgment and order passed in RSA No.580/2017.

6. It is also forthcoming from the materials placed on record that the Judgment-Debtors had preferred a writ petition in W.P.No.28428/2023

before the Hon'ble High Court of Karnataka, wherein the Judgment-Debtors were directed to appear in the present execution petition and contest the same and after considering the matter to pass appropriate orders. Accordingly this Court has perused the materials placed on record and the facts and circumstances of this case.

7. As already observed, the Judgment-Debtors have not placed on record any order of stay directing this Court not to proceed with the execution of the judgment and decree in RSA No.580/2017. The Hon'ble High Court had clearly directed the Judgment-Debtors to hand over the possession to the Decree-holder within 3 months from the date of the order, which the Judgment-Debtors have evidently failed to adhere to and hence the Decree-holder is before this Court seeking the relief sought for as per the said order in the second appeal and hence considering the facts and circumstances of this case, there is no impediment for this Court to take steps in execution of the judgment and decree in RSA No.580/2017. Hence the following:

ORDER

I.A.No.1 filed by the Decree-holder is hereby allowed.

Issue Delivery warrant against the Judgment-Debtors, if steps taken.

R/by 25/10/2024.

Sd/-

ACJ & JMFC, C.N.Halli