

Orders On Application Filed Under Order 21
Rule 37,40 R/W Section 151 Of Cpc

Learned counsel for Judgment Debtor No.3 has filed present application to recall the arrest warrant issued against the Judgment Debtor No.3.

02. Learned counsel for Decree Holder filed objection on the application.

03. Heard learned respective counsels and perused the materials.

04. The present execution petition is filed to execute the award passed in DRN/F/DDS/170/2017-18. In the execution petition the Decree Holder has sought for the relief to attachment and sale of movable and

immovable properties of Judgment Debtor and arrest of Judgment Debtors. Admittedly the Judgment debtor No.3 is the Guarantor/surety for the loan transactions of Judgment Debtor No.1. Judgment Debtor No.2 is the wife of Judgment Debtor No.1. As per the submission made by the learned counsel for Judgment Debtor No.3, the wife of Judgment Debtor No.1. (i.e.,) Judgment debtor .No.2 had offered her Immovable property as security by mortgaging the said property.

05. It is vehemently submitted by the learned counsel for Judgment Debtor No.3 that when immovable property of Judgment Debtor No.2 is offered as security, the Decree Holder at first has to proceed against the property and that when Judgment Debtor No.1 and 2 are very well available, the Decree Holder has to first proceed against the Judgment Debtor No.1 and 2, instead of doing so, the Decree Holder has taken steps against Judgment Debtor No.3 by issuing arrest warrant against the Judgment Debtor No.3. Hence submitted to recall the warrant.

06. It is relevant to state here that Execution Petition is of the year 2018. If the order sheet is perused, arrest warrant was issued both against the Judgment Debtor No.1 and 3. Since Judgment Debtor No.2 is lady, application was filed by the Decree Holder under Order 21 Rule 54 and 64 r/w. Section 151 of CPC for attachment and sale of the property bearing Sy. No.127 measuring 0-15-0 (0-1-0) situated at Mundalli village, Bhatkal Taluk standing in the name of Judgment Debtor No.2 which is pending for consideration.

07. It is well settled that the principle borrower and the guarantor are jointly and severally liable to pay the loan amount. Guarantors liability is co-extensive with that of the principle debtor unless specific contract states otherwise.

08. If the Decree Holder recovers the execution amount from the guarantor, the guarantor steps into the shoes of the Decree Holder and the guarantor can recover the said amount from the principal debtor. The guarantor holds a statutory right of indemnity against the Principal Debtor. Hence merely because

Judgment Debtor No.3 is the guarantor he cannot escape from the liability. When Principal Debtor and guarantor are jointly and severally liable to pay the loan amount, under such circumstances, it is at the option of Decree Holder, against whom he has to proceed.

09. Admittedly at the time of filing the present application, Judgment Debtor No.3 was not present before the Court. In the absence of Judgment Debtor No.3, his counsel filed the applications accompanied by the memorandum of facts of counsel for Judgment Debtor No.3. When the facts pleaded in the memorandum of facts are well within the knowledge of the Judgment Debtor No.3 but not within the knowledge of counsel, under such circumstances the application must be accompanied by affidavit of Judgment Debtor No.3 as provided in Rule 18(2) of the Karnataka Civil Rules of Practice 1967. Further Arrest warrant can be recalled if Judgment Debtor pays the total decretal amount or settle the dues with the Decree Holder or if court is satisfied under Section 59 of CPC that the Judgment Debtor suffers from serious illness or if Judgment Debtor voluntarily appears before the

court through an application shows bonafide intention or undertakes to pay the dues.

10. It is submitted by the learned counsel for the Judgment Debtor No.3 that no notice was given to the Judgment Debtor No.3 prior to the issuance of Arrest Warrant.

11. In the light of the objection raised by the Judgment Debtor No.3, if the previous proceedings borne out in order sheet is perused, arrest warrant against the Judgment Debtor No.3 was preceded by arrest notice and arrest notice was duly served to the Judgment Debtor No.3 on 23-02-2019 and he was represented by learned Sri. M.J.N. Advocate. From time to time Judgment Debtors have made part payment but they have not cleared the loan amount in all these period of 08 years. Hence there is no ground made out to recall the warrant issued against Judgment Debtor No.3. Hence the following;

:ORDER:

Application filed under Order 21 Rule 37, 40 read with Section 151 of CPC is rejected.

sd/-

(Roopashri)

Senior Civil Judge & JMFC., Bhatkal