

Case called out.

Dhr is absent.

Jdr absent.

ORDER ON MAINTAINABILITY

The present execution petition is filed by the DHR society against the JDR No.1 to 3 for recovery of amount of Rs.26,91,429-73 with interest as per the award passed by the Arbitrator and Assistant Registrar of Co-operative Society, Kumta Sub-division, Kumta in Dispute No.94/2018-19 dated 26-09-2018 by attachment and sale of movable and immovable properties and also by arrest and detention of Judgment Debtors.

02. In pursuance of service of notices, the Judgment Debtor No.1 appeared through advocate and filed objection contending that the certificate is not in accordance with award. It is further contended that the Decree Holder has claimed excessive advocate fee and other expenses. It is further contended that the Decree Holder has filed criminal case and the same is pending and hence the present execution petition is not maintainable. It is further contended that the award is passed without any inquiry and hence the same is not executable.

03. In pursuance of service of notices, the Judgment Debtor No.2 and 3 also appeared through advocate and filed common objection contending that the Decree Holder has granted the loan to Judgment Debtor No.1 for cement business; he has sold the cement on credit basis and he is recovering the outstanding loan and depositing to the Decree Holder. It is further contended that the Decree Holder without recovering the outstanding loan forwarded to recover the loan is

not in accordance with law. It is further contended that the Judgment Debtor No.2 and 3 are not the guarantor for the recovery of outstanding loan amount. It is further contended that the Judgment Debtor No.2 and 3 are liable to pay the outstanding loan amount due by Judgment Debtor No.1 only to the extent of Rs.50,000/- each as they have executed surety bond only to that extent and hence they are not liable to pay the entire amount as per the award.

04. Heard the arguments advanced from both sides and perused the materials placed on record.

05. It could be seen from the case papers that the Judgment Debtor No.1 borrowed loan from Decree Holder and Judgment Debtor No.2 and 3 have stood as guarantor. It could be further seen that an award was passed by the arbitrator and Assistant Registrar of Co-operative Society, Kumta as against Judgment Debtor No.1 to 3 holding that Judgment Debtor No.1 is liable to pay Rs.67,90,481/- along with interest and Judgment Debtor No.1 is primarily liable to pay the amount with interest and Judgment Debtor No.2 and 3 are liable to pay the amount to the extent of their guarantee. It could be further seen as per the Surety Bond that the Judgment Debtor No.2 and 3 have executed it only to the extent of Rs.1,00,000/- and therefore they are liable to pay Rs/1,00,00/- with interest.

06. It is well settled that the award passed by the arbitrator and certificate issued by the registrar under the provisions of Karnataka Co-operative Societies Act is executable as per the decree passed by the civil court under Civil Procedure Code, 1908 as per section 101 of Karnataka Co-operative Act. It is well settled that the executing court cannot go beyond the decree and it has to execute the same

as per the terms of the decree. In the present case on hand, Judgment Debtor No.2 and 3 are contending that they are liable to pay only to the extent of Rs.50,000/- and they are not liable to pay the amount mentioned in the award and interest. As the terms of award and certificate, they are liable to pay the amount to the extent of their guarantor ship and the same is only to the extent of Rs.1,00,000/- each. The other objections raised by the Judgment Debtors are also not sustainable before this court. As far as the advocate fee and other expenses are subject to calculation. Hence I am of the opinion that the present petition is executable as per the terms of award and certificate. Hence I proceed to pass the following:

ORDER

The present Execution Petition is maintainable and executable against the Judgment Debtor No.1 to the full extent and the same is maintainable and executable against Judgment Debtor No.2 and 3 to the extent of their guarantee i.e. Rs.1,00,000/- each.

For steps by 04-07-2022.

Sd/-

(KUMARA G.)

***SENIOR CIVIL JUDGE AND JMFC
HONNAVAR***