

KAUP020000052022



IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE AND
CJM., UDUPI

**Present: Sri. Vignesh Kumar,
B.A.(Law), LL.M.**

Prl. Senior Civil Judge & CJM.,Udupi.

Dated : This the 6th day of December, 2023

Ex.Case.No.1/2022

Between:

Rohini R. Maben : **Decree Holder**

(Rep.by Sri.P.P.J., Advocate)

-Versus-

Prema Poojarthi & Ors., : **Judgment Debtors**

(JDrs. 1,2,3 Rep. By Sri. N.K.A., Advocate

JDr. no.5 – Absent , steps to Jdr.no.4,

JDr. no.6 Rep.By Sri.B.N., Advocate)

I.A. No.III

Between:

Prema Poojarthi & Ors : **Applicants**

-Versus-

Rohini R. Maben : **Opponent**

i.	Provision under which the application is filed	Under Order XXI Rule 26 and Sec. 151 of CPC.
ii.	Relief sought for	To stay the further proceeding.
iii.	The date on which the application is filed	05.10.2023
iv.	Number of the application	I.A.No.III
v.	The date on which the objections are filed by different opponents	12.10.2023
vi.	The date on which the orders were passed on the said application	06.12.2023
vii.	Stage of the case, when IA is filed	Hearing

ORDER ON I.A.NO.III

This is an application filed by Jdrs under Order XXI Rule 26 and Section 151 of CPC praying to stay further proceedings of the above Execution Petition till the final disposal of RFA No.1220/2021 pending before the Hon'ble High Court of Karnataka.

2. In the affidavit annexed to the said IA, the JDr no.3 has averred that they have preferred RFA No.1220/2021 before the Hon'ble High Court of Karnataka against the judgment and decree in O.S.No.64/2011 dated 17.09.2021. The Hon'ble High Court had

granted conditional stay order with a direction to furnish the security deposit to the satisfaction of the trial court within 4 weeks. But the JDrs had misunderstood it to be the Court fees amount already deposited before the Hon'ble High Court i.e. Rs.1,37,255/- as the security deposit. It is submitted that the Dhr /plaintiff has failed to pay of Rs.12,15,000/- which is a balance sale consideration amount. Without which the present execution cannot survive. Hence, it is prayed to stay the further proceedings in the present execution in the interest of justice.

3. The DHr has filed detailed objection by contending that there is no merit in the application. Already the JDrs have not complied the conditional stay order granted by Hon'ble High Court of Karnataka. Only with an intention to drag on the execution proceeding the present IA is filed without any basis. The conduct of JDrs no.1 to 3 is not at all bonafide. They have deceived several people by entering into agreement for sale in respect of the very same property after receiving advance amount. There are several cases filed against them in different Courts. Therefore, the decree passed by this Court may be executed without any delay and laches. Hence, it is prayed to dismiss the IA with cost.

4. Heard both side.

5. The following point would arise for my consideration;

“Whether the JDrs no.1 to 3 have made out grounds for staying the present execution ?”

6. My findings to the above point is in the **negative** for the following:

REASON

7. JDrs no.1 to 3 have filed the present IA under Order XXI Rule 26 of CPC. Upon perusal of the said provision it is crystal clear that only if sufficient cause is shown by the JDrs this executing Court can stay the execution for a reasonable time to enable the judgment debtor to apply for stay before the Court which had passed the decree or to any Court having Appellate Jurisdiction. Admittedly, in the present case scenario, the JDrs no.1 to 3 have already approached Hon'ble High Court of Karnataka in RFA No.1220/2021 by challenging the judgment and decree in O.S.No.64/2011.

8. It is further necessary to note here that Hon'ble High Court of Karnataka vide order dated 16.12.2023 had granted conditional stay of the said judgment and decree with a direction to the JDrs no.1 to 3 to furnish security to the satisfaction of this Court, under Order XLI

Rule 5(3) of CPC. Thus the said period of 4 weeks is completed on 15.01.2022. So far the JDrs have neither approached this Court nor furnished security as per the directions of Hon'ble High Court of Karnataka. Instead in the present IA a lame excuse is given by JDrs. It is averred in the affidavit that the direction of Hon'ble High Court of Karnataka to furnish security deposit was misunderstood by them to the Court fee of Rs.1,37,255/- which is already deposited before the Hon'ble High Court. Especially, when the JDrs no.1 to 3 are well represented by the learned advocates, such misunderstanding is not at all possible. It is very much evident that the JDrs have deliberately not complied the conditional stay order granted Hon'ble High Court of Karnataka. Their conduct is mischievous and at present having approached Hon'ble High Court of Karnataka in RFA No.1220/2021 they are debarred from seeking stay of the execution proceeding under Order XXI Rule 26 of CPC.

9. Further, the JDrs have contended that the DHr cannot seek for execution without depositing or paying Rs.12,15,000/- balance sale consideration amount. However, the said contention cannot be taken while seeking stay under Order XXI Rule 26 of CPC. Apart from that the contention regarding wrong description of the schedule property is also beyond the scope of present execution. Hence, there is no merit what so ever in the application either on facts or law.

Hence, above point is hereby answered in the **negative** and this Court deems fit to pass the following;

ORDER

I.A.No.III filed under Order XXI, Rule 26 and Section 151 of CPC is hereby dismissed with cost of Rs.1,000/-.

(Dictated to thee stenographer, transcribed by her in the computer, corrected by me and then pronounced in open court on this the 6th day of December, 2023)

(Vignesh Kumar)
Prl. Sr. Civil Judge and CJM.,
Udupi.