

**ORDERS ON IA NO.17 U/O 21 R 29 R/W
SEC.151 OF CPC**

This is an application filed by the JDr No.1(b) praying to stay this execution proceedings till disposal of the WP 106377/2019 before the Hon'ble High Court at Dharwad Bench.

Application has been supported with the affidavit of JDr No.1(b) and he sworn to that the decree holders have filed the WP 106377/2019 before the Hon'ble High Court at Dharwad Bench with regard to the execution petition schedule properties and it is pending for admission. The EP schedule properties and said petition properties are one and the same. Hence EP is not maintainable. DHr has suppressed the facts before this court. Hence the EP is liable to be stayed. Accordingly he prayed to stay this proceedings of execution petition.

Per contra the DHr has filed detailed objection.

Heard the arguments of both the counsels. Perused.

This is an execution petition in pursuance of the judgment and decree in OS 11/1991 and matter went upto Supreme Court. The JDrs have lost their battle before the Supreme Court.

On perusal of the statement of objection of DHrs it is not in dispute that the decree holders have filed the writ petition before the Hon'ble High Court in WP 106377/2019 with respect to schedule properties and it is pending.

At this juncture on the basis of affidavit of JDrs and objection it is pertinent to note the history of the execution. The decree holder has filed a suit for declaration and possession in OS 11/1991 and it came to be decreed on 08.10.1993. RA 9/1993 has been preferred by the JDrs and it has been dismissed on 17.07.2012. It has been challenged before the Hon'ble High Court in RSA 800/2002 and the Hon'ble High Court was pleased to remand the matter to the 1st appellate court. However again RA came to be dismissed and again RSA 100887/2015 came to be preferred and it also dismissed on 28.08.2018. The matter went upto Supreme Court in SLP 32180/2018, but it also dismissed on 14.12.2018. In the meanwhile a suit has been filed before the Civil Judge & JMFC, Hadagali in OS 169/2015 and the parties of the suits have obtained the compromise decree without disclosing the said proceedings. Since the decree holder is not a party in the said compromise petition, he has preferred the writ petition before the Hon'ble High Court in WP 106377/2019 challenging the compromise decree between the JDrs. That is the reasons now this application has been filed by the JDr No.1(b). At this juncture it is benefit to refer the

provision of Order 21 rule 29 of CPC (Karnataka Amendment Act) which reads as under:

29. Stay of execution pending suit between decree-holder and judgment-debtor:-*Where a suit is pending in any Court against the holder of a 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, 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:*

As per the above provision if a suit is pending in any court against the decree holder against whom the said decree has passed the said court can stay the execution of the decree until pending suit has been decided. Here no suit is pending before any court against the decree holder, but the decree holder himself has preferred the writ petition before the Hon'ble High Court by challenging the compromise decree. The suit is different, filing the writ petition is totally different. Hence as per the provision of Order 21 rule 29 of CPC this proceedings cannot be stayed as virtually there is no suit pending against the decree holder.

At this juncture it is benefit to refer the decision of Hon'ble Supreme Court reported in AIR 1973 SC 528 in between Shaukat Hussain Alias Ali Akram & Ors. V/S Smt. Bhuneshwari Devi (dead)) By L. Rs. & Ors. Wherein the lordship of Hon'ble Supreme Court held as hereunder:

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the, instance of the judgment-debtor against the decree-holder. That is a condition under which the court in which the suit is pending may stay the execution before it. If that was the only condition,

Hon'ble Supreme Court further held that

It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such court. The words "such court" are important. "Such court" means in the context of that rule the court in which the suit is pending. In other words, the suit must be one not only pending in that court but also one against the holder of a decree of that court.

As per the ratio of Hon'ble Supreme Court and the word such court used in Rule 29 means the court herein the pending suit and the court that has passed the decree under the execution must be one and the same. There must be a pending suit for adjudication. Admittedly there is no pending suit as per the provision of Rule 29. Hence merely because the decree holder has preferred the writ petition before the Hon'ble High Court challenging the compromise decree does not come within the purview of Order 21 rule 29 of CPC. Hence application is devoid of merits and liable to be dismissed at least with cost of

Rs.1,000/- . Accordingly I proceed to pass the following:

ORDER

IA No.17 under Order 21 rule 29 r/w Sec.151 of CPC filed by the JDr No.1(b) is hereby dismissed with cost of Rs.1,000/-.

Call on for inquiry on IA 16 by 20.03.2021.

Sr. Civil Judge., Huvinahadagali.