

ORDERS ON I.A.No.XIX toXXI

These applications under order XXI Rule 26 r/w Sec.151 of CPC filed by the objectors and Order XXI Rule 97 and 98 r/w Sec.151 of CPC and Order XXI Rule 35 and 97 r/w Sec.151 of CPC filed by the Dhhs and sought for to stay the execution of the decree and to kept in abeyance of delivery warrant for a period of 4 weeks till the disposal of the SLP (Civil No.13121/22) and to direct the police to give police assistance and protection for the execution of delivery warrant and permitting to remove or break open any lock or bolt or dismantle, remove or break open any door of the schedule properties.

2. Brief facts of the accompanying affidavit filed in support of I.A.XIX are as under:

The objector namely Mitresh Ramachandra, sonof R. Ramachandra Swamy has filed the affidavit in support of the application stating that he has filed the affidavit on his behalf and on behalf of his wife as well as other sub-lessees who are the objectors stating that they entered registered deed of sub-lease dated 28.01.2011 with Mr. Bindu Makhija who had been subleased M/s IDEB Projects Pvt. Ltd. who had been assigned their rights in Sigma Mall to M/s IDEB Projects Pvt. Ltd., vide registered deed of transfer of sub-lease who had been assigned the said unit by Mr. G. Ramaiaaya who had entered into agreement lease dated 08.08.2000 with M/s IDEB Projects Pvt. Ltd. in relation to the schedule property for until November 2062 before the Office of the Sub-Registrar, Shivaji Nagar vide document No.SHV-100259 of 2007-2008 stored in C.D.No.SHVD81 dated 13.04.2007 and possession of the said unit was handed to his father on 28.01.2011 and association was formed by sub-lessees of Sigma Mall in the year 2014 in the name and style of M/s Sigma Mall. Sub-lessees welfare association which was entrusted with the maintenance and upkeep of the mall. The welfare of the association had informed all the sub-lessee that the execution has been filed to execute the award dated 03.11.2014 passed by the three arbitrators in relation to the entire Sigma Mall and they came to know about the execution proceedings only recently in

July 2021 and the sub-lessees who are legally in possession of their respective units were made parties to the arbitration proceedings and a fraud is played on them and the arbitral award was obtained behind their back by playing fraud.

3. The Mitresh Ramachandra in his affidavit has further stated that the original lessee filed the arbitration suit No.18/2015 before the 12th Addl. City Civil & Session Judge, Bangalore challenging the arbitral award under Sec.34 of the Arbitration and Conciliation Act, 1996 and there was a automatic stay of the award having regard to the legal position that existed earlier. The objector along with other sub-lessees filed application for impleading in the arbitration suit and in the very proceedings stay has been granted for a long period but the application was not taken up for consideration and the decree holder played fraud has filed the instant execution petition and impleading applications which filed by them were came to be dismissed on 17.11.2021 and they were approached the Hon'ble High Court of Karnataka by filing Com.A.No.35/2022 which came to be dismissed on 08.07.2022 by upholding the orders passed by this court. Thus they approached the Hon'ble Supreme Court against the judgment of Hon'ble High Court of Karnataka passed in Com.A.No.35/2022 by filing SLP Civil Petition No.13121/2022 and they were in legal possession of the A and B property. Therefore, it is just and necessary to stay the execution of the decree for a period of 4 weeks otherwise they will be put to irreparable loss and injustice and prays for allow the application.

4. The learned counsel for the DhRs orally objected the application which filed by the objectors.

5. The 4th decree holder has filed the affidavit in support of the I.A.No.XX and XXI stating that they have filed the instant execution petition for execution of the award which passed by the arbitral tribunal and they have also sought for delivery of possession of the schedule A and B properties and direction to the Jdrs to pay a sum of Rs.20,13,17,525/- as on 03.10.2018 along with further interest till the date of payment and mesne profit till the date of handing over possession of schedule A and B

properties and attachment and sale of immovable property of the judgment debtor in schedule C to the petition and attachment and sale of movable properties situated in the schedule C property and this court was pleased to pass the order on 19.07.2022 for reissue delivery warrant for recovery of possession of schedule properties on 25.07.2022 when the court bailiff arrived at the schedule A and B properties and attempted to enter along with them, and they were met with severe resistance therein including from private security persons present in the schedule properties and found that several units inside the building have been locked. Therefore court bailiff was unable to execute the delivery warrant issued by the court and handover the possession to them and the bailiff prepared a report to that effect and submitted to the court. Therefore it is just and necessary to direct the police for police protection for execution of the delivery warrant issued by this court and allowed the bailiff to remove or open any locks or bolts or dismantle, remove or break open any door or do any act necessary for putting them in possession of the schedule properties and prays for allow the applications.

6. The learned counsel for the objectors orally objected the applications which filed by the DhRs.

7. Heard the arguments on both sides.

8. Now the points that arise for court consideration are as under:

POINTS

1. Whether the objectors were made out sufficient cause to stay the execution of a decree for reasonable time to enable them to apply to the appellate jurisdiction?
2. Whether the DhRs are entitled the relief as sought in I.A.No.XX and XXI?
3. What order?

9. My answer to the above points are as under:

Point No.1: In the Negative;

Point No.2: In the affirmative;

Point No.3: As per final order, for the following;

REASONS

10. **POINT NO.1 and 2**: These points are interrelated to each other, hence in order to avoid the repetition of facts and materials on record, these points are discussed together. So, before embarking on point No.1 and 2, it is just and necessary to narrate the gist of the case for the proper appreciation of point No.1 and 2, as the DHRs being said to be the owners of the Site bearing No.15, 16, and 17 situated at Cunningham Road, Bengaluru were executed the registered lease deed dated 13.03.2006 granting on the lease property in favour of the JDR No.1 for 30 years commencing from 06.11.2002 and expiring on 05.11.2032 for the purpose of constructing a commercial complex known as Sigma Mall comprising inter-Alia multiplex cinema theater, food court, restaurants, coffee shops and one more lease deed has been executed on 27.03.2006 in favour of the JDR No.1 for further period of 30 years commencing from 06.11.2032 and expiring on 05.11.2062 and 2nd lease deed provided in the event of termination of the 1st lease deed prematurely or otherwise the 2nd lease deed shall automatically and forthwith come to an end and shall stand canceled and terminated and the 1st JDR put up the construction of the commercial complex described schedule B and leased out the same to various sub-tenants on exorbitant/ premium and collected huge amounts by way of parking charges from the visitors to the said Sigma Mall and he was due for arrears of rent for which notice has been issued, but he did not pay it. So as per the arbitration clause, in the agreement the arbitral tribunal passed the award on 03.11.2014, feeling aggrieved by the said award, the JDR filed A.S.No.18/2015 before the City Civil Court, Bengaluru under Sec.34 of Arbitration and Conciliation Act for seeking to set aside the arbitral award dated 03.11.2014 and the matter is pending for consideration, thereby the DHRs have filed the instant petition for execution of the award dated 03.11.2014. When the case was set down for await delivery warrant, the objectors were filed the applications and

those applications were came to be dismissed on 17.12.2021 and they have challenged the said orders before the Hon'ble High Court of Karnataka and the said appeal came to be dismissed and on 19.07.2022 issued delivery warrant and posted to 18.08.2022, at the request of the DhRs matter has been taken up on board on 27.07.2022. The learned counsel for the DhRs filed the I.A.XX and XXI and the objectors counsel filed the I.A.XIX which referred above.

11. The learned counsel for the objectors while canvassing his arguments has submitted the objectors were filed the applications before this court, but the said applications were came to be dismissed, against the orders of this court Com.A.No.35/2022 has been filed before the Hon'ble High Court of Karnataka which was came to be dismissed and the objectors were already filed the special leave petition (civil) No.13121/2022 before the Hon'ble Supreme Court which is pending for consideration if the delivery warrant is executed, the purpose of filing of the SLP before the Hon'ble Supreme Court will be defeated and the objectors were in lawful possession of A and B schedule property and the applications which filed by the DhRs are not maintainable. Therefore, it is just and necessary to stay the execution of the decree for a period of 4 weeks and prays for allow the application.

12. The learned counsel for the DhRs in his arguments has submitted that the application which filed by the objectors are not maintainable in law or on facts, as the objectors were filed the applications before this court and this court dismissed the applications, against the said orders were filed the appeal before the Hon'ble High Court and the said appeal came to be dismissed and the objectors soon after disposal of the appeal they did not sought any relief to stay the orders passed by the Hon'ble High Court of Karnataka on the ground that the objectors were intending to file the appeal before the Hon'ble Supreme Court. Therefore, the objectors have no right to file application before this court and to sought for stay the execution of the decree and this court issued delivery warrant for the execution of the award

which passed by the arbitral tribunal, but the bailiff unable to execute the delivery warrant as per the reasons mentioned in the report as the objectors were obstructed for execution of delivery warrant, thereby it is just and necessary to direct the police for police assistance for the execution of delivery warrant and to accord permission to the bailiff to break open the lock and prays for allow the applications.

13. It is an admitted fact the DhRs were filed the instant execution petition based on the award dated 03.11.2014 passed by the arbitral tribunal comprising of Hon'ble Mr. Justice R.G. Vaidyanath, Retd., Hon'ble Mr. Justice K. Shivashankar Bhat, Retd., and Hon'ble Mr. Justice S. Venkataraman, Retd., and after issuance of cause notice the Jdrs were appeared through their respective counsel, though the DhRs were sought for issue of delivery warrant which was kept in abeyance as per order dated 16.03.2021, thereafter the Dhr counsel files application under Sec.114 and Sec.151 of CPC with affidavit for which the learned counsel for the Jdr No.1 has submitted no objection to I.A.No.VII, and the said application was came to be allowed and order which passed by this court dated 16.03.2021 was came to be reviewed and re-issue delivery warrant for recovery of possession of the execution petition schedule A and B properties. When the case was set down for await report, the objectors were filed the applications and after hearing the applications which filed by the objectors came to be dismissed and against the orders of this court dated 17.12.2021 the objectors were filed the appeal before the Hon'ble High Court of Karnataka by filing Com.A.No.35/2022 which was came to be dismissed on 08.07.2022. Now the very objectors and the DhRs were filed these applications.

14. It is an admitted fact the learned counsel for the objectors has much argued on Order XXI Rule 26 of CPC. So for the proper appreciation of the arguments which advanced by the learned counsel for the objectors is necessary for reproduction which reads like this:

Rule 26 Order XXI of Code of Civil Procedure 1908
"When Court may stay execution"

(1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the Judgment-debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if application for execution had been made thereto.

(2) Where the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.

(3) Power to require security from, or impose conditions upon, judgment-debtor-

The above provision is very much clear the court to which a decree has been sent for execution shall upon sufficient cause being shown stay the execution of such decree for reasonable time to enable the Jdr to apply to the court by which the decree was passed or to any court having a appellate jurisdiction in respect of the decree.

15. Admittedly, the instant execution petition has been filed based on the award which passed by the arbitral tribunal and the objectors were filed the applications which are came to be dismissed by this court and they have already challenged the said orders before the Hon'ble High Court of Karnataka and the said appeal came to be dismissed. So, by virtue of the very provision, the objectors were not entitle the relief as sought in the

application and moreover, the very objectors were already filed the memo stating that they were approached the Hon'ble Supreme Court and filed the Special Leave Petition No.13121/2022. Thus they have already approached the appellate court, question of granting the relief under the provision which sought by the objectors does not arise, as the very provision enable this court if the Jdrs brings the application within the ambit of Order 21 Rule 26 of CPC, then executing court can grant the stay to enable the Jdrs to apply to the appellate court, but the objectors were failed to bring their case within the ambit of Order 21 Rule 26 of CPC.

16. It is an admitted fact the objectors were not disputed that the Dhers were filed the instant execution petition based on the award which passed by the arbitral tribunal. Thus this court drawn its attention on Sec.36 of the Arbitration and Conciliation Act which reads like this:

¹[Section 36: Enforcement.

36. (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908

(5 of 1908).]

The above provision is very much clear where an application to set aside the arbitral award has been filed in the court under Sec.34, the filing of such an application shall not by itself render that award unenforceable unless the court grants an order of stay of the operation of the said arbitral award.

17. In the instant case, though the objectors were not filed the application under Sec.34 of the Arbitration and Conciliation Act but unless obtain the stay from the appellate authority, the appeal which filed before the Hon'ble Supreme Court shall not by itself render that award unenforceable and this court is only the executing court cannot go beyond the award, admittedly delivery warrant has been issued by this court for execution of the award, for which the court Bailiff filed the report stating that who is unable to execute the delivery warrant because of obstruction. Therefore, if the police assistance is not provided to the Bailiff who is unable to execute the delivery warrant as per the report which filed by the court bailiff. Therefore, it is just and necessary to accord permission to the Bailiff to break open the lock with the assistance of the police and to execute the delivery warrant. Otherwise the award which passed by the arbitral tribunal will be defeated and the Dhurs will not enjoy fruits of the award, unless it is executed. Hence, I am of the opinion that the point No.1 answered as Negative and point No.2 answered as Affirmative.

18. **POINT NO.3**: In view of my answer to point No.1 and 2 as stated above, I proceed to pass the following;

ORDER

The I.A.No.XIX filed under Order XXI Rule 26 of CPC which filed by the objectors is hereby rejected.

The I.A.XX and XXI filed under Order XXI Rule 97 and 98 R/w Sec.151 of CPC and Order XXI Rule 35 and 97 R/w Sec.151 of CPC which filed by Dhars are hereby allowed.

For steps by:

(P.J. Somashekara)
LXXXVIII Addl. City Civil & Sessions Judge,
(Exclusive Commercial Court),
Bengaluru City