



CNR No.MHSI070001532004
Order passed below Exh. No.190
in R.D.No. 10/2004

Judgment Debtor No. 2 has filed the present application seeking to set aside the “no say orders” dated 31.07.2007 and 04.01.2008. It is his contention that he did not receive proper legal advice at the relevant time and, as a result, was unable to file his say, which prevented a proper adjudication of the matter. He contends that in the interest of justice and to ensure fair procedure, his reply on record is just and necessary. He reiterates that the failure to respond earlier was not intentional but was due to lack of proper legal guidance. He is less educated. He further contends that the present execution proceedings have been conducted under an improper procedure, and to rectify the same, the orders passed against him must be set aside. He further contends that if this application is not allowed, he will suffer irreparable loss and injury that cannot be compensated in terms of money. He, therefore, prayed that the application be allowed.

2) The application is opposed by the decree holder, who has filed a detailed reply at Exh. 203. It is contended that the present application is false, frivolous, and lacks merit. The reasons advanced for not taking steps to set aside the “no say orders” are neither satisfactory nor reasonable. It is pointed out that the two orders dated 31.07.2007 and 04.01.2008 cannot be set aside through a single composite application. Furthermore, the application has been filed after a delay of nearly 17 years, without any accompanying prayer or application seeking condonation of such delay. The execution proceedings have been pending for over 21 years, and Judgment Debtor No. 2 was present on most dates of hearing. He had ample opportunity to file his reply. He has filed the present application only to delay the proceedings and obstruct the decree holder from

enjoying the fruits of the decree. The decree holder further submits that Judgment Debtor No. 2 has engaged various advocates from time to time, and hence the claim of not receiving proper legal advice is untenable. He, therefore, prays for rejection of the application.

3) The learned advocate for the D.H. has relied upon following authorities,

(A) In the case of ***Lanka Venkateswarlu (D) by LRs v. State of Andhra Pradesh & Ors. (2011) 4 SCC 363***, the Hon'ble Supreme Court set aside the order of the Hon'ble High Court condoning the delay, on the ground that the High Court itself had recorded a finding of utter negligence on the part of the respondents in pursuing the appeal, yet proceeded to condone the delay without justifiable cause.

(B) In the case of ***Ashok Kumar v. District Magistrate, Bijnore & Ors. (2012) 3 SCC 311***, the Hon'ble Supreme Court upheld the decision of the Hon'ble High Court in refusing to condone the delay, as the appellant had failed to substantiate his claim that the delay was due to his mother's illness with any credible evidence.

4) I have perused the record and considered the rival submissions. The execution proceedings arise from the decree directing removal of construction by the defendants, as shown in the map annexed at Exh. 25. A perusal of the proceedings reveals that the said orders dated 31.07.2007 and 04.01.2008 were passed against Judgment Debtor No. 2. The record also shows that the Judgment Debtor No. 2 was present on

most hearing dates, and was aware of the developments in the execution. Moreover, third-party applications under Order XXI Rule 97 CPC were also filed and disposed of during this period, in the presence of Judgment Debtor No. 2. Despite this, no steps were taken to seek setting aside of the “no say” orders for over 17 years.

5) While it is true that the Hon’ble Supreme Court in several judgments has emphasized the need for a liberal and justice-oriented approach in deciding such applications, such discretion must be exercised judiciously and not mechanically. In the case of ***Lanka Venkateswarlu (supra)***, the Hon’ble Supreme Court set aside an order condoning delay, where the High Court itself acknowledged gross negligence. On the other hand, the Judgment Debtor No.2 in the present case has been consistently aware of the proceedings, yet failed to act diligently. His plea of lack of legal advice, does not constitute sufficient cause for setting aside the said orders.

6) The conduct of the Judgment Debtor No.2 indicates that he did not intend to challenge the decree, and no appeal has been preferred against the same. It appears that having lost hope of succeeding in this execution proceeding, he chose not to participate meaningfully in the execution. The present application seems to be an afterthought, lacking in bona fides, and intended solely to delay the proceedings.

7) In view of the above, I am of the considered opinion that the Judgment Debtor No.2 has failed to make out any plausible or justifiable ground for setting aside the “no say” orders passed against him. Therefore, the application is devoid of merit and liable to be rejected. Hence following order,

ORDER

1. The application Exh. 190 is rejected with Costs.

Pronounced and dictated in open Court.

Date - 08/07/2025

M.K.Fakih
Civil Judge Jr.Dn., Malvan.