

KABC010233602021



**IN THE COURT OF THE VII.ADDL.CITY CIVIL &
SESSIONS JUDGE, BENGALURU (CCH.No.19)**

Dated: This the 9th day of March, 2023.

PRESENT

SMT.S.G.SUNITHA, B.Sc., LLB.,
VII Addl. City Civil & Sessions Judge,
Bengaluru.

Ex.CASE NO.1970/2021

Decree Holder	:	M/s Manappuram Chits (Karnataka) Pvt Ltd., Registered office at: Old No.1586, New No.44, 2 nd Floor, East End Main Road, Near Shrirama Mandira, 9 th Block, Jayanagara, Bengaluru – 560 069. Rep. by its Senior Assistant Mr.Girish Poojary B S/o Hoovayya Poojary Aged about 49 years, (By Smt. Shailaja M., Advocate)
V/S		
Judgment Debtors	:	1. Mr. Manikanata S S/o Shivappa, Tholasanadoddi, Hosandhahalli, Masthi Hobli, Malur Taluk, Kolar – 563 130.

	2. Mr. Ramesh S/o Shambu Gowda No.125, 2nd Main, 2nd Cross Road, Chowdeshwari Nagar, Laggere, Bengaluru – 560 058. 3. Mr. Pradeep P S/o Prabhakara, No.125, 2nd Main, 2nd Cross Road, Chowdeshwari Nagar, Laggere, Bengaluru – 560 058. 4. Mr. Narayana Swamy S/o Nanjappa, Kuppur, Hassanda Halli Post, Masthi Hobli, Malur Taluk, Kolar 563 130. 5. Mrs. Manjulamma W/o Shivappa, Tholasanadoddi, Hosandhahalli, Masthi Hobli, Malur Taluk, Kolar – 563 130. 6. Mr. Thimme Gowda C S/o Chennappa, Institute of Animal Health and Veterinary Biologicals (Disg-Janitor) Hebbal, Bengaluru – 560 024. (By Sri.K.V. Vijayakumar Gowda., Advocate)
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ORDER ON EXECUTION PETITION

This is an execution petition filed by Decree Holder seeking attachment and sale of schedule immovables property of Judgment Debtor and attachment of salary of the Judgment

Debtor No.6 and arrest of Judgment Debtor and detention in the civil prison and attachment and sale of movables of Judgments Debtors to be shown by Decree Holder or his agent and Warrant of attachment of movable properties.

2. In pursuance of this execution petition, notice came to be issued to judgment debtor and said notice returned as refused by judgment debtors No.1 to 6, accordingly, affixed on the door. However, later Judgment Debtors No.1 appeared through his counsel and resisted this petition contended as follows;

The very execution petition filed by the Decree Holder is not at all sustainable either in law, facts, probabilities and circumstances of the case on hand and hence the same is liable to be dismissed in limine at the threshold itself. This court has no jurisdiction to entertain the matter as the transaction taken place between the parties at Malur Taluk and therefore the same is liable to be dismissed in limine. The very petition filed by the Decree Holder is bad for mis joinder and non joinder of proper and necessary parties and hence the same is liable to be dismissed in limine. The Decree Holder has not complied with the statutory provisions before initiating the dispute before the Arbitrator as required under law. Hence, the same is liable to be dismissed in limine. Without issuing the notice to the Judgment Debtor prior to passing of the award, the Decree Holder has played fraud and misrepresentation on the Judgment Debtor and obtained the order behind the back of the Judgment Debtors and hence the same is liable to be dismissed in limine at the threshold itself. The transaction taken

place at Malur, but the Decree Holder has initiated the proceedings at Bengaluru and therefore this court has no ample power to invoke the jurisdiction in entertaining the matter between the parties. Intentionally and purposefully the Decree Holder has not deducted the amounts paid by the Judgment Debtors on various dates as per the terms and conditions of the hypothecation loan agreement and also claimed excess rate of interest than the one agreed at the time of transaction. Hence, on this count alone the same is liable to be dismissed in limine as not maintainable. This Judgment Debtor is not liable to pay any amounts to the Decree Holder and the one claimed in the execution petition is highly excessive, exorbitant, imaginary and illusory theory of the Decree Holder and there is details and on this count alone the same is liable to be dismissed. Hence, prayed to dismiss the above petition with costs, in the interest of justice and equity.

Objection statement filed by JDR No.1 and adopted by JDR No.2 and 5 stating that Execution petition is not sustainable in law and that this court has no jurisdiction to entertain and petition is bad for misjoinder and nonjoinder of proper and necessary parties. Further, award had been passed without issuing the notice and at the back of JDR and DHR has not deducted the amount paid by JDR's on various dates as per terms of hypothecation loan agreement and is claiming excess rate of interest. Hence, prays to dismiss the above petition.

3. Heard the arguments. I have carefully scrutinized the entire records before me. Written Arguments filed by the Decree Holder.

4. Now the points that arise for my consideration are as under;

1. Whether Decree Holder is entitled for the relief as prayed ?
2. What Order?

5. My findings on the above points are:

- Point No.1 : In the Affirmative;
Point No.2 : As per final order,
for the following:

REASONS

6. **POINT NO.1:** Upon considering the above facts and on perusal of the documents produced by the Decree Holder i.e., copy of authorization letter, original arbitral award dated 20.04.2021 copy of recovery certificate dated 29.09.2021 it is seen that JDR's have not challenged the award passed till date and now in this petition they are contending that they were not served with notice prior to passing of award and that excess rate is claimed and this court has no jurisdiction as proceedings were initiated at Bengaluru for the transaction taken at Malur. As said above without challenging the award, his contention's hold no water and it is seen from the award that in para 3 that remainder notice sent by RPAD to opponent's No.1, 4, 5 and 6 have been served on them and notice sent to opponent No.2 and 3 were unserved. Therefore paper publication was taken in Hosadigantha. After paper publication when case was taken up for hearing all the opponents failed to

appear before this Hon'ble court & hence they were placed Exparte.

7. Further, as to jurisdiction it was a matter of challenge in appeal before the registrar of chits. As award was passed in Bengaluru, this court has jurisdiction to execute the same. Accordingly, Point No.1 held in the Affirmative.

8. **POINT NO.2:** In view of my findings on Point No.1, I proceed to pass the following:

ORDER

The Execution Petition filed by the
Decree Holder is maintainable.

Issue attachment/warrant/Moveables
against JDR's, if PF paid by 31.05.2023.

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(Dictated to the Stenographer on Computer and print out taken thereof is revised, corrected, signed and then pronounced by me in Open Court on this the **9th day of March, 2022**).

(S.G.SUNITHA)
VII Addl. City Civil & Sessions Judge,
Bengaluru.