



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 10470 OF 2020 (GM-CPC)

BETWEEN:

1. SRI. M N MANJE GOWDA
S/O LATE NANJEGOWDA,
AGED ABOUT 65 YEARS,
R/OF MARANAYAKANAHALLI VILLAGE,,
KASABA HOBLI,
HOLLNARSIPURA TALUK,
HASSAN-573211

...PETITIONER

(BY SRI. MANIKANTA H.B.,ADVOCATE)

AND:

1. SRI. MALLESHA
S/O G REVANNA @ REVANNA,
AGED ABOUT 69 YEARS,
R/AT HAVINAMARANAHALLI VILLAGE,
HALLIMYSURU HOBLI,
HOLENARASIPURA TALUK,
HASSAN-573210

...RESPONDENT

(RESPONDENT - SERVED AND UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TOCALL FOR THE RECORDS IN EXECUTION CASE NO.10 OF 2019 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC AT HOLENARASIPURA ANDQUASH THE ORDER DATED 16.11.2019 PASSED IN EXECUTION CASE NO.10 OF 2018 BY THE ADDITIONAL CIVIL JUDGE AND JMFC AT HOLENARASIPURA, PRODUCED AS ANNEXURE-A AND ETC.



THIS PETITION, COMING ON FOR FINAL HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 16.11.2019. By the Impugned Order, arrest and detention of the Judgment Debtor was directed by the Learned Execution Court.
2. None appears for the respondent/Judgment Debtor despite service.
3. Given the pendency of the matter and the fact that stay of proceeding was granted by the Court on 08.10.2020, this Court deems it apposite to hear and decide this matter today.
4. The brief facts in the case are that a suit for declaration and injunction filed by the Decree Holder before the Trial Court was decreed on 21.06.2016. In pursuance of this decree execution proceedings were filed by the Decree Holder on 10.04.2018. During the pendency



of the execution proceedings, an application came to be filed by the respondent under Order XXI Rule 32 of the CPC for seeking arrest and detention of the Judgment Debtor.

5. The evidence was led by both the Judgment Debtor and the Decree Holder and arguments were heard as well. The learned counsel for the petitioner/Judgment Debtor submits that no separate application was filed. However, the execution petition was itself treated as the application. Reliance is placed on the following extract-

IN THE COURT OF THE ADDITIONAL CIVIL JUDGE AT H.N. PURA

EX.CASE NO.10 OF 2018

Under Order 21 Rule 11 of the Code of Civil Procedure.....

Decree-Holders	Mallesha S/o. G. Revnna@ Revanna Aged about 69 years Havinmaranahilly village Hallymysore Hobli Holenarasipura Taluk Hassan District		
Judgement/ Debtor/s	M.N. Manjegowda S/o. Late Nanjegowda Aged about 65 years Maranayakana hally village, Kasaba Hobli Holenarasipura Taluk Hassan District		
No. and Date of Decree	Trial Court O.S.NO.261/2013 21-06-2016	Appellate Court R.A.27/2016 D/D 3/2/2018	High Court R.S.A. No. D/D
Whether any appeal has been preferred from the Decree	-II-		
Payment or adjustment made, if any	-II-		
Previous application if any, with date & result	-II-		



-2-		
	Rs.	P
1. Decree Amount.....	.....	
2. Interest on Principle Rs..... date of suit up to date at 6 percent PA from	.....	
3. Costs awarded in the Sull	.....	
4 Costs of the Appellate Court	.....	
5. High Court Costs	.....	
6. Costs of Copies	.....	
7. Previous Execution Costs	.....	
8. Present Execution Costs	.....	
9. Advocate's Fee	.....	
10. ....	.....	
TOTAL		
Less amount received with counter interest thereon at 6% per annum		
Balance		
Against whom to be executed	The judgement Debtor/s	
Mode in which the assistance of the court is sought	1) Attachment and sale of movables of Judgements Debtor to be shown by Decree holder or his agent. 2) Arrest of Judgement Debtor and detention in the civil Prison 4) The decree holder prays that the said decree be trans-ferred to the court of (through the District Court for execution as the judgements debtor is residing carrying on the business/possess properties within the jurisdiction of the Cour 3) Attachment and sale of schedule immovable property 4) The decree holder prays that the said decree be transferred to the court of (through the District Court for execution as the judgements debtor is residing carrying on the business/possess properties within the jurisdiction of the Court 5) ಡಿಕ್ರಿ ಹೋಲ್ಡರ್ ರವರ ಶೆಡ್ಯೂಲ್ ತಿನ ಸ್ವಾಧೀನಅನುಭವಕ್ಕೆ ಜೆ.ಡಿ.ಆರ್. ರವರು ತೊಂದರೆ ನೀಡದಂತೆ ಪೋಲೀಸ್ ಸಹಾಯವನ್ನು ಪೋಲೀಸ್ ಸಹಾಯವನ್ನು ನೀಡಬೇಕಾಗಿಯು ಪ್ರಾರ್ಥನೆ	

Advocate for the Decree Holder

Decree Holder



6. The Learned counsel for the petitioner/Judgment Debtor contends that this is the only application that has been placed on record and this is in contravention with the provisions of Order XXI Rule No.11-A of the CPC. The learned counsel further seeks to rely upon the judgment of the Supreme Court in the case of **Bhudev Mallick @ Bhudeb Mallick and Another vs Ranajit Ghoshal and Others¹** to submit that unless an requisite affidavit is filed by the Judgment Debtor, the Court cannot proceed to pass a direction under this provision.

7. At this stage it is appropriate to set out Order XXI Rule 11-A and Order XXI Rule 32 of the CPC, which reads as follows:

11A. Application for arrest to state grounds. Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for.

XXXX XXXX XXXX

25. Order XXI Rule 32 of the Code reads thus:-

"32. Decree for specific performance for restitution of conjugal rights, or for an injunction. (1) Where the party

¹ 2025 SCC OnLine SC 360



HC-KAR

against whom a decree for the specific performance of a contract, or for restitution of conjugal rights, or for an injunction, has been passed, has had an the decree may be enforced 1 [in the case of a decree for restitution of conjugal rights by the attachment of his property or, in the case of a decree for the specific performance of a contract or for an injunction] by his detention in the civil prison, or by the attachment of his property, or by both.

(2) Where the party against whom a decree for specific performance or for an injunction has been passed is a corporation, the decree may be enforced by the attachment of the property of the corporation or, with the leave of the Court, by the detention in the civil prison of the directors or other principal officers thereof, or by both attachment and detention.

(3) Where any attachment under sub-rule (1) or sub-rule (2) has remained in force for 2 [six months,] if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold; and out of the proceeds the Court may award to the decree holder such compensation as it thinks fit, and shall pay the balance (if any) to the judgment-debtor on his application.

(4) Where the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or where, at the end of 2 [six months] from the date of the attachment no application to have the property sold has been made, or if made has been refused, the attachment shall cease.

(5) Where a decree for the specific performance of a contract or for an injunction has not been obeyed, the Court may, in lieu of or in addition to all or any of the processes aforesaid, direct that the act required to be done may be done so far as practicable by the decree-holder or some other person appointed by the Court, at the cost of the judgment-debtor, and upon the act being done the expenses incurred may be ascertained in such manner as the Court may direct and may be recovered as if they were included in the decree."



HC-KAR

8. The Supreme Court in **Bhudev Mallick's case** has held that while relying on Rule 32(1) of Order XXI held that where there is a decree passed injunctioning a party and the judgment debtor willfully disobeys such decree, the execution it may be executed by attachment of property of the judgment debtor or by his detention or by both. Order XXI Rule 11-A provides that where an application is made for arrest and detention, it must be accompanied by an affidavit specifying the grounds on which the arrest is sought. The Supreme Court has while clarifying this provision held that this provision is mandatory and no arrest can be ordered without a requisite affidavit. The relevant extract of this judgment is set out below -

26. Sub-rule (1) of Rule 32 states that where a decree is for specific performance of a contract, or for an injunction, and the judgment-debtor wilfully disobeys such decree, it may be executed by attachment of property of the judgment-debtor or by his detention, or by both.

27. Sub-rule (2) declares that where in a decree for specific performance or for injunction, the judgment-debtor is a corporation, it may be enforced by attachment of the property of the corporation, or with the leave of the court by detention of the directors or other principal officers or by both, attachment and detention.



28. Sub-rule (3) provides for sale of attached property and payment of the sale-proceeds to the decree-holder where the attachment remains in force for six months and the judgment-debtor fails to obey the decree.

29. Sub-rule (4) deals with cases where the judgment-debtor obeys the decree or the decree-holder commits default.

30. Sub-rule (5) empowers the executing court to take appropriate action for enforcing the decree at the cost of the judgment-debtor who wilfully disobeys such decree.

31. The Explanation clarifies that the expression "the act required to be done" covers prohibitory as also mandatory injunctions.

32. Order XXI Rule 11-A of the Code reads thus:—

"11-A. Application for arrest to state grounds.— Where an application is made for the arrest and detention in prison of the judgment-debtor, it shall state, or be accompanied by an affidavit stating, the grounds on which arrest is applied for."

33. The proviso to Section 51, as inserted by the Code of Civil Procedure (Amendment) Act, 1936 (Act 21 of 1936) limited the grounds on which a judgment-debtor could be arrested or detained.

34. The Law Commission considered the amendment of 1936 and stated:—

"This is new. Since Section 51, proviso, now limits the grounds on which a judgment-debtor can be arrested (after the 1936 amendment), it is desirable to provide that the application under Order XXI, Rule 11 should state the grounds on which arrest is sought for. This will assist the court in taking action under Order XXI, Rule 37 (notice to show cause), and also further proceedings under Order XXI, Rule 40. It has been held that the existence of the circumstances mentioned in Section 51, proviso (a) to (c) should be alleged either in the execution application or in an



accompanying affidavit. Unless such a circumstance is alleged (it was pointed out), the court cannot think of the circumstances and, in its absence, the court cannot take action under XXI, Rule 37."

35. Rule 11-A states that where an application is made for the arrest and detention of the judgment-debtor, it must state or accompanied by an affidavit - specifying the grounds on which arrest is sought. Rule 11-A of Order 21 is in conformity with the substantive provisions of proviso to Section 51 of the Code. Stating of grounds or filing of affidavit is essential. **The provision is thus mandatory and unless it is complied with, no arrest or detention of the judgment-debtor can be ordered. But if the requisite affidavit is not filed by the decree-holder, the court should afford an opportunity to him to file such affidavit.**

36. It is well settled that a decree of permanent injunction is executable with the aid of the provisions contained in Order XXI Rule 32 of the Code referred to above, and any act in violation or breach of decree of permanent injunction is a continuing disobedience entailing penal consequences.

[Emphasis Supplied]

9. As stated above the learned counsel for the petitioner has relied on Annexure 'H' to say that this was all that was produced before the learned Trial Court and no affidavit was filed. In this view of the matter, the Impugned Order cannot be sustained and is set aside.



10. The parties shall appear before the learned Trial Court on 08.04.2026 in pursuance of the judgment passed today.

11. The order passed today shall not be construed to prevent the decree holder from taking appropriate steps in accordance with law for the arrest and detention of the Judgment Debtor.

12. The rights and contentions of both parties are left open to be agitated before the Trial Court.

13. The parties will act based on a digitally signed copy of the order.

14. All pending applications stand closed.

**(TARA VITASTA GANJU)
JUDGE**

YKL

List No.: 2 Sl No.: 16