



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 34575 OF 2025 (GM-CPC)

BETWEEN:

1. SMT. GOWRAMMA B.,
W/O LATE DODDATHIMMAIAH,
AGED ABOUT 68 YEARS,
NO.F127, "VAIBHAV NILAYA",
5TH CROSS, 2ND MAIN,
BHARATH NAGAR 1ST STAGE,
BENGALURU – 560 091.
2. SMT. MUNIRATHNAMMA,
W/O SRI SIDDARAJU S.,
AGED ABOUT 51 YEARS,
R/AT NO.243, 6TH CROSS,
BHARATH NAGAR 1ST STAGE,
BENGALURU – 560 091.

...PETITIONERS

(BY SRI. H. N. SHASHIDHARA, SENIOR COUNSEL FOR
SRI. H. S. SUHAS, ADVOCATE)

AND:

1. MR. RAHUL AGARWAL
CHIEF EXECUTIVE OFFICER,
POWER STEEL,
NO. 6/1A, NEAR ADISHWAR COMPLEX
SUNKADKATTE, MAGADI MAIN ROAD,
BENGALURU – 560 091.
2. MR. KRISHNA KUMAR,
BIKE ACCESSORIES,
NO. 6/1A, NEAR ADISHWAR COMPLEX
SUNKADKATTE, MAGADI MAIN ROAD,
BENGALURU – 560 091.

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CHANDANA
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Location:
High Court of
Karnataka



3. MR.CHANDRASHEKHAR,
PROPRIETOR,
HUMMINGBIRD,
NO. 6/1A, NEAR ADISHWAR COMPLEX
SUNKADKATTE, MAGADI MAIN ROAD,
BENGALURU – 560 091.
4. MR. PRAVEEN KUMAR,
PROPRIETOR,
LIKITHA POLYMERS,
NO. 6/1A, NEAR ADISHWAR COMPLEX
SUNKADKATTE, MAGADI MAIN ROAD,
BENGALURU – 560 091.
5. MR. HEMANTH,
MANJUSHREE FRESH CHICKEN
SY NO. 130/1, OPPOSITE INDIAN OVERSEAS BANK
MACHOHALLI, MAGADI MAIN ROAD,
BENGALURU – 560 091.
6. MR. RAGHU KUMAR,
PROPRIETOR,
NATI DONNE BIRYANI,
SY NO. 130/1, OPPOSITE INDIAN OVERSEAS BANK,
MACHOHALLI, MAGADI MAIN ROAD,
BENGALURU – 560 091.
7. MRS. SHWETHA,
PROPRIETOR,
GANESH FOOT WEAR,
SY NO. 130/1, OPPOSITE INDIAN OVERSEAS BANK,
MACHOHALLI, MAGADI MAIN ROAD,
BENGALURU – 560 091.
8. MR. D G RAVI,
PROPRIETOR,
GURUMALLESWARA PROVISION STORE,
NO. 6/1A, NEAR PIPELINE ROAD,
NEAR JANAPRIYA APARTMENT,
SUNKADKATTE, MAGADI MAIN ROAD,
BENGALURU – 560 091.
9. MR.CHETAN



SRI. VARI ENTERPRISES XEROX SHOP,
NO.6/1A, NEAR ADISHWAR COMPLEX
SUNKADAKATTE, MAGADI MAIN ROAD
BENGALURU – 560 091

...RESPONDENTS

(BY SRI. SUBRAMANYA KAUSHIK R.S., ADVOCATE FOR R5 & R6;
R7 - SERVED)

THIS W.P. IS FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI SETTING ASIDE THE IMPUGNED ORDERS DATED 31.10.2025 ON MEMO AND 02.07.2025 PASSED BY THE HON'BLE XXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-40) IN EX. NO.691/2023 VIDE ANNEXURE-A AND F.

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the decree holders in Ex.P.No.691/2023 is directed against the impugned order dated 31.10.2025 passed by the XXXIX Additional City Civil & Sessions Judge, (CCH-40), Bengaluru (for short “the Executing Court”), whereby the Executing Court dismissed the memo filed by the petitioners-Decree Holders, to the effect that enquiry was not required to decide the application filed by respondent Nos.5 and 6 – Judgment Debtors, under Order 21 Rule 97 CPC was dismissed by the Executing Court.



2. Heard learned Senior counsel for the petitioners and learned counsel for respondent Nos.5 and 6 and perused the material on record.

3. Learned Senior counsel would reiterate the various contentions urged in the petition and submits that respondent Nos.5 and 6 - Judgment Debtors, who are tenants in occupation of the portion of the suit schedule property were not parties to the suit in O.S.No.1306/2020 apart from compromise decree dated 01.09.2022 passed in the said suit, the petitioners-Decree Holders were entitled to execute the said compromise decree as against all the Judgment Debtors though they were not parties to the suit or the compromise decree. It is therefore submitted that since the petitioners would be entitled to execute the decree as against the respondents-Judgment Debtors, there was no necessity of conducting any enquiry on the application filed by the respondents-Judgment Debtors under Order XXI Rule 97 CPC, especially when the earlier applications filed by the other tenants had been rejected by the Executing Court and the same had attained finality.

3.1 In support of their contentions, learned counsel for the petitioners have relied upon the following decisions:



- i) *Ram Sarup Vs. Chanan Singh & Ors. – RSA No.325/1963 dated 06.02.1964 (Punjab & Haryana)*
- ii) *Silverline Forum (P) Ltd. Vs. Rajiv Trust – (1998) 3 SCC 723 (Karnataka)*
- iii) *Nancy Pais Vs. S. Surendra – ILR 2010 KAR 629 (Karnataka)*
- iv) *M.S. Chandra Shekar V. P. Kanakambara Rao – RFA No.1007/2009 (Karnataka)]*
- v) *Sri. Vignesh Shishir Vs. Kumari Divya Paramesh & Ors – RFA No.211/2025 C/w. RFA No.214/2025 (Karnataka)]*
- vi) *Sri. Vignesh Shishir Vs. Kumari Divya Paramesh & Ors. – SLP No.23954-23955/2025*

4. Per contra, learned counsel for respondent Nos.5 and 6 – Judgment Debtors submits that apart from the fact that respondent Nos.5 and 6, who were undisputedly not parties in the suit or to the compromise decree had not been provided any opportunity to put forth their defence and seek adjudication of their claim on merits, respondent Nos.5 and 6, who had been made parties to the execution proceedings, who are entitled to put forth their respective contentions and as such, the Trial Court was fully justified in directing the enquiry to be conducted on the application



by dismissing the memo filed by the petitioners, by passing the impugned order, which does not warrant interference by this Court.

4.1 In support of their contentions, learned counsel for respondent Nos.5 and 6 have relied upon the following decisions:

- i) *Ramchandra Verma Vs. Jagat Singh Singhi* – (1996) 8 SCC 47.
- ii) *Shreenath Vs. Rajesh* – (1998) 4 SCC 543.
- iii) *Ratanlal Jain Vs. Umashankar Vyas* – (2002) 2 SCC 656.
- iv) *Amar Nath Vs. Dharam Chand Jani* – AIR 1966 All 528

5. After hearing both sides, the Executing Court on 02.07.2025, it is also submitted that the execution petitions as against respondent Nos.5 and 6 – Judgment Debtors, who were not parties to the suit or the compromise decree, which was not binding upon him, was not maintainable and the impugned order does not warrant interference by this court in the present petition.

6. A perusal of the material on record will indicate on 02.07.2025, pursuant to the respondents – Judgment Debtors filing I.A.Nos.5, 6, 7, 10 and 11, under Order XXI Rule 97 CPC, the Trial Court on 02.07.2025 directed enquiry on the said application since the respondent - Judgment Debtors claimed to be



obstructors/objectors to the execution petition, in which they were arrayed as Judgment Debtors, the Executing Court took into account that since the respondents were not parties to the suit or the compromise decree and their contentions and claims had not been put forth or adjudicated upon in the suit or the compromise decree, it was necessary to conduct an enquiry before proceeding further in the matter. While coming to the said conclusion, the Executing Court held as under:

“ORDERS ON MEMO

The counsel for decree holder filed Memo and submitted that, the enquiry under Order 21 Rule 97 is not necessary to decide the application filed by the Judgment Debtor under Order 21 Rule 97. Wherefore, the same may be taken on record in the interest of justice and equity and hence prays to allow this Memo.

2. The judgment debtor Nos.6 & 7 filed objections to the above application and submitted that, the above application is not maintainable in law in the given facts and circumstance of this case. It is submitted that, it is not open to the decree holders to seek such prayer. JDR Nos. 6 and 7 among others filed statement of objections to the main execution petition raising a challenge to the very maintainability of an execution proceedings against the said JDRs. In addition thereto, they also filed applications under Order 21 Rule 97 read with Section 151, CPC with a prayer



to declare that the compromise decree which is sought to be enforced against them does not bind them. On an earlier occasion, this Hon'ble court had issued a warrant for delivery of possession although the judgment-debtors had filed objections to the execution proceeding. Issuance of the warrant came to the challenged before the Hon'ble High Court of Karnataka. By is common order dated 13.02.2025 in WP No. 33049/2024 C/W W.P. No.33030/2024, the Hon'ble High Court set aside the orders issuing delivery warrants against JDR Nos. 6 and 7 and directed that the objection filed by the judgment-debtors be considered by this Hon'ble Court in accordance with law. On 02-07-2025, this Hon'ble Court after perusing the record and on hearing the brief submissions made by the counsel for the DHRs and counsel on behalf on behalf of JDR Nos. 6 and 7 directed enquiry in the objections applications filed under order 21 Rule 97, CPC. Accordingly, the matter was posted for enquiry on the same. The said order dated 02-07-2025 is binding on the parties, the same not having been recalled or reviewed in a manner known to law. In the background of the above circumstances, it is now not open to the decree holders to put the clock back and once again contend that no enquiry is required at all. Hence, the request made by the decree holders by way of their Memo dated 11.08.2025 liable to be rejected and hence prays to dismiss the Memo.

3. Heard the arguments on both the sides.

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



1. *Whether the Decree holder have made out sufficient grounds to allow this Memo?*

2. *What order ?*

5. *My answer to the above points are as follows :*

Point No.1 : In the Negative

Point No.2 : As per final order for the following :

REASONS

6. **POINT NO.1** : *I have gone through the contents of the application and objection statement.*

7. *The decree holder filed Memo and submitted that, the enquiry under Order 21 Rule 97 CPC is not necessary to decide the application filed by the Judgment Debtor under Order 21 Rule 97 CPC*

8. *The DHR counsel vehemently argued that DHR filed suit for partition and separate possession as per O.S.No.1306/2020 and the matter was compromised on 01.09.2022 and final decree was drawn. As per the compromise petition plaint 'A' schedule property allotted to DHR No.1, plaint 'B' schedule property to DHR No.2 and plaint 'C' schedule property to Venkatesh and plaint 'D' schedule property to Arun Kumar and final decree was drawn.*

9. *The DHR counsel further submitted that after final decree DHR No.1 issued an attornment notice to JDR No.9 to enter into a new agreement with him as property now fallen to the share of DHR No.1 and he also issued notices to other JDRs. The JDR No.7 replied stating that DHR No.1*



should get mutation and khatha in his name. JDR No.2, 3, 5, 10, 11, 12 & 13 replied disputing the ownership of DHR's and demanded to refund the security deposit paid to Venkatesh. Hence the DHR filed executed petition for the enforcement of compromise decree.

10. JDR No.3 filed I.A.No.1/2023 U/o 21 Rule 99 CPC seeking to set aside the execution petition and it was rejected on 30.07.2024 and it was challenged before Hon'ble High Court of Karnataka as per W.P.No.28185/2024 and meanwhile JDR No.5 vacated on 26.11.2024 handing over the physical possession of premises to DHR No.1. Possession was also taken from JDR No.10 & 12 through court.

11. The DHR counsel submitted that JDR No.6 & 7 filed W.P.33036/24 and W.P.No.33049/2024 as against the delivery warrant which was allowed and directed them to deposit rent before the executing court. Possession was taken from JDR No.3 and 11. The DHR submitted that inquiry is not necessary.

12. The counsel for JDR No.6 & 7 vehemently argued that enquiry is necessary under Order 21 Rule 97 is independent claim of different JDR and the contentions raised by all the JDR's are not one and the same. There is no decree at all as against the JDRs. In the compromise decree there is no recitals to give delivery of possession. When there is no word about delivery of possession they cannot file execution for delivery of possession. The prayer sought in execution petition is beyond the decree.



13. *The JDR counsel further submitted that as per compromise petition the DHR has to enforce it through Venkatesh and here the said Venkatesh is not the JDR and further submitted that they cannot dispute the ownership but they are lawful tenants and Sec.109 of Transfer of Property Act applies. The JDR in occupancy and they cannot be ousted from possession without the due process of law and further submitted that possession is difficult from occupation and this JDR are in occupation and not in possession. The JDR further submitted that DHR has to file separate suit as against the JDR.*

14. *It is pertinent to note that JDR No.1 and 8 filed I.A.No.5 & 6 under Order 21 Rule 97 CPC.*

15. *It is pertinent to note that JDR No.4 filed I.A.No.7 under Order 21 Rule 97 R/w Sec.47 and Order 21 Rule 100 & 101 of CPC.*

16. *It is pertinent to note that JDR No.6 and 7 filed I.A.No.10 & 11 under Order 21 Rule 97 R/w 47 of CPC and Order 21 Rule 100 and 101 of CPC.*

17. *The contention of the DHR is that inquiry is not required on I.A.No.5, 6, 7, 10 and 11 as already other tenants filed the similar applications which was subjected by this court and it was challenged before the Hon'ble High court of Karnataka also rejected with observations. These observations are also applicable to I.A.No.5 to 7, 10 & 11 and inquiry conducted will not give different findings.*



18. It is pertinent to note that Chethan Kumar who is the tenant filed an application under Order 21 Rule 97 of CPC and it was dismissed 30.07.2024 and it was challenged as per W.P.No.28185/2024 (GM-CPC) and it was ordered on 25.10.2024 with observations as follows:

3. An application under order XXI Rule 97 has to be adjudicated in the manner detailed under Order XXI Rule 99 of CPC. A perusal of Order XXI Rule 103 of CPC shows that any adjudication of an application under Order XXI Rule 99 of CPC would result in a decree and therefore, an appeal alone is maintainable against the impugned order. Hence, the office objections regarding maintainability is upheld.

4. Accordingly, this writ petition is dismissed. However, liberty is reserved to the petition to file an appeal in accordance with law.

5. Office is directed to return the certified copy of the impugned order to the learned counsel for the petition after retaining a photocopy.

6. It is needless to mention that the time consumed in pursuing this writ petition shall be deducted while calculating limitation application to an appeal.

As Per above observations of Hon'ble High Court of Karnataka that under Order 21 Rule 97 to be adjudicated and its ordered to be challenged as an appeal. There is no other observations are made by Hon'ble High court of Karnataka. The JDR's filed different application than the earlier JDR tenant with different contentions. To decide the same inquiry is required as per law. Accordingly, I answer the above point No.1 in the Negative.

19. **POINT NO.2** : In view of my findings on the above points, I proceed to pass the following :

ORDER



*The Memo filed by the decree holder under Order 21
Rule 97 is hereby dismissed.”*

7. As can be seen from the impugned order passed by the Trial Court, in the light of the undisputed fact that the respondents-Judgment Debtors were not parties to the suit or the compromise decree, which is sought to be executed in the present petition, it was incumbent and absolutely essential that an opportunity be granted/given in favour of the respondents-Judgment Debtors to put forth their contentions, since the said opportunity was not made available to the respondents-Judgment Debtors in the suit or the compromise decree and consequently, having regard to the principles of natural justice and in order to provide one opportunity to the respondents to put forth their contentions and claims, the Trial Court was fully justified dismissing the memo filed by the petitioners by rejecting his contention and as such, I am of the view that the impugned order passed by the Executing Court does not suffer from any illegality or infirmity warranting interference by this Court in exercise of its powers under Article 227 of the Constitution of India, as held by the Apex Court in the case of **Radhey Shyam Vs. Chhabi Nath – (2015) 5**



***SCC 423, , K.P. Natarajan Vs. Muthalammal – AIR 2021 SC
3443 and Mohammed Ali Vs. Jaya – (2022) 10 SCC 477.***

8. Accordingly petition is hereby disposed of without interfering with the impugned order. The Executing Court is directed to conduct enquiry on I.A.Nos.1, 2, 4, 6, 7 and 8 filed by Judgment Debtors and pass appropriate orders within a period of six months from the date of receipt of a copy of this order.

**Sd/-
(S.R.KRISHNA KUMAR)
JUDGE**

BMC
List No.: 2 SI No.: 6