NC: 2023:KHC:42054
WP No. 17264 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE S.G.PANDIT

WRIT PETITION NO. 17264 OF 2023 (GM-CPC)

BETWEEN:

SRI. G. MANOJ KUMAR
S/O GANAPATHILAL BOHRA,
AGED ABOUT 46 YEARS,
R/AT 1ST MAIN,
VIVEKANANDANAGAR,
CHANNARAYAPATNA-577201.

...PETITIONER

(BY SRI. H.N.MANJUNATH PRASAD, ADV.)

AND:

SRI. C. A. MAHESH
S/O C R ADISHETTY,
AGED ABOUT 61 YEARS,
R/AT J C ROAD,
NEAR KANNA BAKERY AND
PREMIER STUDIO,
MYSURU-570001.

...RESPONDENT

(RESPONDENT IS SERVED & UNREPRESENTED)

Digitally signed by B LAVANYA
Location: HIGH COURT OF KARNATAKA

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO DIRECT THE SENIOR CIVIL JUDGE AND JMFC, CHANNARAYAPATNA TO COMPLETE THE EXECUTION PROCEEDINGS IN EX. CASE NO.97/2017 PRODUCED ANNEXURE-E FILED BY THE

PETITIONER AS DECREE HOLDER FOR EXECUTION OF DECREE PASSED IN O.S.NO. 45/2015 PRODUCED AT ANNEXURE-A2, SINCE, NO COURT OF LAW HAS PASSED ANY ORDER STAYING THE OPERATION OF THE JUDGMENT AND DECREE IN O.S.NO.45/2015.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner, decree holder has put into execution the judgment and decree dated 21.06.2017 in O.S.No.45/2015 in Ex.Case No.97/2017 on the file of Senior Civil Judge and JMFC, Channarayapatna.

2. Heard learned counsel Sri.H.M.Manjunath Prasad for petitioner. Though respondent is served, has remained absent. Perused the writ petition papers.

3. Learned counsel for the petitioner would submit that the Execution Petition filed in the year 2017 is being adjourned from time to time on the ground that Misc.

No.7/2018 is pending, wherein the respondent/Judgment Debtor has sought setting aside the judgment and decree which is put into execution. Learned counsel would submit that there is no interim order either in the miscellaneous petition or in any other proceedings. In the said circumstances, learned counsel would submit that Executing Court is not justified in adjourning the Ex. Case No.97/2017. Thus, he prays for a direction to the Executing Court to dispose of the Execution Petition expeditiously.

4. Having heard the learned counsel for the petitioner and on perusal of the writ petition papers, I am of the view that a direction shall have to be issued to the Executing Court to dispose of the Ex.Case No.97/2017 expeditiously.

5. O.S.No.45/2015 was decreed in favour of the petitioner herein under judgment dated 21.06.2017 granting specific performance directing defendant No.1 to receive balance consideration from the plaintiff and to

execute registered sale deed in respect of the suit schedule property. The said judgment and decree was put into execution in Ex.Case No.97/2017. The judgment debtor is served with notice in the execution case. The respondent/judgment debtor submitted before the Executing Court that Misc.Petition No.7/2018 is pending consideration wherein the respondent/judgment debtor has prayed to set aside the judgment and decree dated 21.06.2017 in O.S.No.45/2015.

6. Admittedly, there is no stay of judgment and decree put into execution in any proceedings either before the trial Court or before the Appellate Court. In the absence of any interim order staying the judgment and decree, the Executing Court shall have to proceed further in the execution proceedings. Only on the ground of pendency of miscellaneous petition, the Executing Court could not have adjourned the matter from time to time.

7. In the above circumstances, the Executing Court is directed to proceed in the Execution proceedings and conclude the same as expeditiously as possible.

With the above the writ petition stands disposed of.

Sd/-
JUDGE

MPK
CT:bms
List No.: 1 Sl No.: 63