IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 15TH DAY OF OCTOBER, 2024

BEFORE

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

WRIT PETITION NO. 200041 OF 2023 (GM-CPC)

BETWEEN:

DHANAJAYA S/O LINGANNA
AGE 41 YEARS OCC. BUSINESS,
R/O BANDESHWAR AGRO AGENCIES,
NO. 12-1-60, GUNJ ROAD, RAICHUR

...PETITIONER

(BY SRI. SHIVANAND PATIL, ADVOCATE)

AND:

1. M/S MARGADARSI CHITS (KARNATAKA) PVT LTD,
   1ST FLOOR, ANAND TOWERS, GANDHI CHOWK,
   RAICHUR-584101, BY ITS FOREMAN / MANAGER

2. NAVEEN PATEL S/O JETHALA D PATEL
   AGE 54 YRS, OCC. BUSINESS,
   R/O C/O M/S MAHALAXMI INDUSTRIES FACTORY,
   PLOT NO. 13, ROAD NO. 17, IDA NACHARAM
   HYDERABAD-76

3. GIRIGOPAL S/O RANGAPPA
   AGE 46 YRS, OCC BUSINESS,
   R/O M/S SRINIVAS MOTORS,
   SINDHANOOR ROAD MANVI, DIST RAICHUR-584123

4. D RAGHAVENDRA S/O DHANAJAYA
   AGE 45 YRS, OCC. BUSINESS,
   R/O M/S DHANAJAYA MOTORS, GOUSHALA ROAD

Digitally signed by SUMITRA SHERIGAR
Location: HIGH COURT OF KARNATAKA

RAICHUR-584101

5. EASHWARAMMA W/O LATE BHEEMAREDDY
AGE 48 YRS, OCC. HOUSEWIFE, R/O H NO. 1-13-19/A/64, SATISH, NILAYA, ASHWINI COLONY, BEHIND LAXMI SWAMY MUTT, GADWAL ROAD, RAICHUR-584101

6. JETHALAL D PATEL S/O DEVASI PATEL
AGE 74 YEARS OCC. BUSINESS, C/O MAHALAXMI INDUSTRIES FACTORY PLOT NO. 13, ROAD NO. 17, IDA NACHARAM HYDERABAD-76

7. VEERBHADRAPPA S/O JAMBANNA
AGE 42 YEARS OCC. PVT. EMPLOYEE R/O GOPAL REDDY H NO. 25-9-097,NEAR EASHWAR TEMPLE, MAKTHAIPET, RAICHUR-584101

8. PRAVEEN J PATEL S/O JETHALA D PATEL
AGE 54 YRS, OCC. BUSINESS, R/O C/O M/S MAHALAXMI, INDUSTRIES FACTORY, PLOT NO. 13, ROAD NO 17, IDA NACHARAM HYDERABAD-76

…RESPONDENTS

(SRI. SANJEEVKUMAR C. PATIL, ADV. FOR R1;
NOTICE TO R5 SERVED;
NOTICE TO R2, R3, R6 TO R8 DISPENSED WITH;
R4 UNCLAIMED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, A) A WRIT OF CERTIORARI OR ANY OTHER ORDER OF THE LIKE NATURE AND SET ASIDE THE IMPUGNED ORDER DATED 30.08.2022 FOLLOWED BY REPEAT ORDER DATED 03.12.2022 IN E P NO. 36/2018 ON THE FILE OF IIIRD ADDL SR CIVIL JUDGE AND JMFC RAICHUR AS PER ANNEXURE- D1 AND D2, IN THE INTEREST OF JUSTICE.

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

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

ORAL ORDER

(PER: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR)

Notice to respondent Nos.2, 3, 6, 7 and 8 are dispensed with, in view of the proposed order to be passed.

2. This petition by the Judgment debtor No.3 in Execution Petition No.36/2018 on the file of the Principal Senior Civil Judge, Raichur, is directed against the impugned orders dated 30.08.2022 and 03.12.2022, whereby, the executing Court directed issuance of arrest warrant as against the petitioner/judgment debtor No.3, as well as against the respondent No.4-judgment debtor No.4.

3. Heard the learned counsel for the petitioner and learned counsel for respondent No.1. Perused the records.

4. A perusal of the material on record will indicate that, in the aforesaid execution proceedings in Execution Petition No.36/2018 filed by the respondent No.1-decree holder, the petitioner was arrayed as judgment debtor No.4. By the impugned orders, the executing Court directed issuance of arrest warrant as against the petitioner and the respondent No.4. In this context it is relevant to state that respondent No.4-judgment debtor No.4 approached this Court in W.P.No.202896/2022 (GM-CPC), which was disposed of vide final order dated 24.11.2022 by holding as under:

"ORDER

R. DEVDAS J., (ORAL):

The petitioner who is judgment debtor No.4 is before this Court calling in question the order dated 30.08.2022 directing issuance of arrest warrant against the petitioner. While the matter came up for Preliminary Hearing, this Court had passed the following order:

"Issue emergent notice to the respondents.

The petitioner is also permitted to serve a copy of the writ petition on the learned counsels representing the respondents before the executing Court.

Learned counsel for the petitioner submits that in terms of Order XXI Rule 37 of CPC, the executing Court is required to issue notice to the judgment-debtor in case where the executing Court is of the opinion that the arrest and detention of the judgment-debtor in civil prison is necessary. The learned counsel submits that the executing Court had earlier issued notice of arrest in respect of judgment-debtor Nos.3 and 4 (petitioner being judgment-debtor No.4), by order dated 28.06.2022. However, on 26.08.2022, a submission was made on behalf of learned counsel for the decree-holder reporting payment of entire due and closure of the petition was sought since the entire amount due was satisfied. Accordingly, the execution petition was closed as fully satisfied on 26.08.2022. Nevertheless, on 30.08.2022, an application under Section 151 of CPC was filed by the decree-holder seeking re-opening of the case on the ground that by oversight instead of filing memo in Execution Petition No.26/2020, memo was filed for closure of Execution Petition No.36/2018. Accordingly, while allowing the application and re-opening the execution petition, the executing Court directly issued arrest warrant against the petitioner. Learned counsel therefore submits that there is non-compliance of requirement as provided under Order XXI Rule 37 of CPC.

This Court has noticed the fact that the petitioner herein is represented by a learned counsel before the executing Court. Further, twice notice of arrest was issued against the petitioner and it returned unserved. Nevertheless, to give one last opportunity to the petitioner, re-list this matter on 21.11.2022.

Till then, the executing Court is directed not to precipitate the matter insofar as the petitioner is concerned."

2. However, learned counsel for contesting respondent No.1 which is the decree holder has drawn attention of this Court to proviso to Rule 37 of Order XXI of the Code of Civil Procedure (for short, hereinafter referred to as 'CPC') which provides that such notice shall not be necessary if the Court is satisfied, by affidavit, or otherwise that, with the object or effect of delaying the

execution of the decree, the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court

3. Having regard to the submissions of the learned counsels on either side, this Court noticed the fact that the petitioner herein who is the judgment debtor is represented by a learned counsel before the executing Court. Nevertheless, for technical reasons, this writ petition is required to be allowed and therefore, this Court proceeds to pass the following:

ORDER

i) The impugned order dated 30.08.2022 passed by III-Additional Senior Civil Judge and JMFC, Raichur, in E.P.No.36/2018 is hereby quashed and set aside insofar as issuance of arrest warrant in respect of the petitioner is concerned.

ii) Nevertheless, the executing Court is directed to issue notice to the petitioner herein to appear before the Court instead of issuing arrest warrant in terms of Rule 37 of Order XXI of CPC. This Court is also expressly permitting the executing Court to furnish a copy of notice to the learned counsel who represents the petitioner before the executing Court. On the date which is specified in the notice, if the petitioner does not appear before the executing Court, the executing Court may proceed to pass necessary orders of arrest against the petitioner and proceed thereafter in accordance with law.

Ordered accordingly."

5. It is an undisputed fact and a matter of record that the petitioner-judgment debtor No.3 and respondent No.4-judgment debtor No.4 stood on the same footing insofar as the impugned orders passed by the executing Court are concerned and consequently, applying the doctrine of parity, I deem it appropriate to set aside the impugned orders insofar as the petitioner is concerned also and allow and dispose of the present petition in terms of the Judgment of this Court in W.P.No.202896/2022 (GM-CPC).

6. In the result, I pass the following:

ORDER

(i) The petition is allowed and disposed of in terms of the Judgment passed in W.P.No.202896/2022 (GM-CPC).

(ii) The impugned orders dated 30.08.2022 and 03.12.2022 passed in E.P.No.36/2018 by

the III Additional Senior Civil Judge and JMFC Court, Raichur are hereby quashed, insofar as the petitioner is concerned.

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

SVH
List No.: 1 Sl No.: 11