

(2022) 05 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 37754 Of 2017 (GM-CPC)

S.R. Manjappa

APPELLANT

Vs

Mahabaleshwara Nagabhath

RESPONDENT

Date of Decision : 12-05-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 21 Rule 22
Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 05 KAR CK 0010

Hon'ble Judges : Jyoti Mulimani, J

Bench : Single Bench

Advocate : Nataraju, Bimbadhar M. Gowdar

Final Decision : Dismissed

Judgement

Jyoti Mulimani, J

1. Sri.Nataraju, learned counsel on behalf of Sri.Pruthvi Wodeyar, for petitioner has appeared through video conferencing.

Sri.Bimbadhar M.Gowdar, learned counsel for respondent, has appeared in person.

2. The parties are referred to as per their ranking before the trial court.

Plaintiff initiated action against the defendant on the file of the Court of Additional Senior Civil Judge & JMFC, Sagar with a prayer to refund of earnest money with interest contending that the defendant is the absolute owner in possession of the plaint schedule property and had agreed to sell the property to the plaintiff for a total sale consideration of Rs.37,50,500/- (Thirty Seven Lakhs Fifty Thousand and Five hundred only) and in that regard agreement for sale dated 17.11.2011 was entered and the plaintiff paid a sum of Rs.5,00,000/- and within one month from the date of the agreement, he had to pay the balance sale consideration and the defendant had to execute the registered sale deed. It

is also contended that due to dispute with regard to the boundary, the plaintiff got issued the legal notice to the defendant stating that he would cancel the agreement and directed him to pay the advance amount with interest at the rate of 15% p.a. The defendant did not pay the amount and tried to alienate the property. Hence the suit.

After service of summons, the defendant entered appearance and contested the suit by filing the written statement. The trial court decreed the suit on 13.03.2017. The plaintiff filed execution petition in Ex.P.No.40/2017 with a prayer to attach the movables of the judgment debtor, for arrest of judgment debtor and detention in civil prison and for attachment and sale of schedule property. Subsequent to the filing of the execution petition, the executing court by order dated 23.06.2017 issued arrest notice to the defendant/judgment debtor by dispensing with issuance of notice in view of provisions of Order 21 Rule 22 of CPC. The judgment debtor failed to appear. The executing court vide order dated 13.07.2017 issued arrest warrant.

The judgment debtor filed an application for recalling the order dated 13.07.2017. plaintiff- decree holder filed objections. It is stated that the judgment debtor filed a memo for auction of the property for recovery of money. The decree holder filed objections contending that the judgment debtor can pledge or mortgage the property elsewhere to discharge the claim and also contended that the judgment debtor cannot direct the decree holder regarding the mode of recovery.

The Executing Court vide order dated 09.08.2017 dismissed the application.

Under these circumstances, the petitioner having left with no other of alternative and efficacious remedy has filed this writ petition under article 226 and 227 of the Constitution of India.

3. Learned counsel for petitioner and respondent have urged several contentions.
4. Heard the contentions urged on behalf of parties and perused the writ papers with utmost care.
5. The real and short question which requires consideration is whether the order passed by the executing court requires interference by this court?

The facts have been sufficiently stated. It is not in dispute that the decree holder filed execution petition for recovery of money as per the decree dated 13.03.2017 passed in O.S.NO. 25/2013. It is also not in dispute that as per the decree, the judgment -debtor is liable to pay a sum of Rs.5,00,000/- with interest at the rate of 10% per annum from 17.11.2011 till realization.

The order sheet of the execution case is at Annexure-E. I have perused the same with care. The order sheet dated 23.06.2017 depicts that the issuance of show cause notice to the judgment debtor was dispensed with by the executing court since the petition was filed within 2 years. The executing court issued arrest

notice to the judgment debtor by 13.07.2017. The petition was posted to 13.07.2017 and the judgment debtor did not attend the court, hence the Executing Court issued arrest warrant against the judgment debtor by 28.07.2017.

Suffice it to notice that on 19.07.2017, the judgment debtor filed advanced application for advance of the petition and filed application i.e., I.A.NO.2 to recall the order dated 13.07.2017. The case was ordered to be called on 20.07.2017. The decree holder filed objections. The proceedings continued at intervals.

It is relevant to note that the reason accorded by the judgment-debtor for recalling the order is that the advocates did not attend the court on account of death of one of the advocates at Sagar. The Executing Court in extenso referred to the contentions and ultimately concluded that the reasons for non-appearance is not a valid and sufficient reason. I quite agree with the finding of the Executing Court. The same does not require any interference by this court.

In so far as the order on memo also, the Executing court in extenso referred to the contentions urged on behalf of the parties and has rightly held that the judgment-debtor has not made out a sufficient ground to direct the property for recovery of decretal amount.

I may venture to say that the Executing Court rightly concluded that the judgment- debtor has not made a sufficient ground to recall the arrest warrant issued against him and also not made out any sufficient ground to direct the decree holder to auction the property for recovery of the amount.

Learned counsel for petitioner was very critical in his submission regarding the procedure adopted by the Executing Court. A very detailed and effective argument was put forth before this Court by counsel for petitioner regarding non- compliance of the provisions of the Civil Procedure Code. I am unable to accept the said submission. The Executing Court as is apparent from the proceedings has adhered to the compliance of the provisions of the Code of Civil Procedure. There is a complete compliance and there is no mis-carriage of justice.

6. In the result, I find no ground to interfere with the order.

Consequently, the writ petition is dismissed.