HC-KAR

NC: 2026:KHC:59830
WP No. 9382 of 2026

CNR: KAHC010215382026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 9382 OF 2026 (GM-CPC)

BETWEEN:

1. SRI. S. LAKSHMINARASIMHA,
SON OF LATE SHANTHARAJU,
AGED ABOUT 62 YEARS,
RESIDING AT NO. 33/2,
2ND CROSS, 5TH MAIN ROAD,
DHATTATREYANAGAR,
BSK-III STAGE, HOSAKEREHALLI,
BANGALORE 560 085.

2. SRI. S. LOKESH
SON OF LATE SHANTHARAJU,
AGED ABOUT 51 YEARS,
RESIDING AT NO. 33/2,
2ND CROSS, 5TH MAIN ROAD,
DHATTATREYANAGAR,
BSK-III STAGE, HOSAKEREHALLI,
BANGALORE - 560 085.

...PETITIONERS

(BY SRI. H. MUJITABA., ADVOCATE)

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

AND:

1. SMT. T. P. KUSUMA
WIFE OF LATE. SHASIDHAR,
AGED ABOUT 64 YEARS,
RESIDING AT NO.978,

7TH CROSS, BSK 1ST STAGE,
2ND BLOCK, BANGALORE - 560 050.

…RESPONDENT

(BY SRI. RAJEGOWDA B., ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF TEH CONSTITUTION OF INDIA PRAYING TO DIRECTION, QUASHING THE ORDERS DATED 06/01/2026 AND 04/03/2026 IN EX.P. NO.200/2024 PASSED BY LEARNED VII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE (CCH-19) DIRECTING ISSUANCE AND RE-ISSUANCE OF THE ARREST WARRANT, VIDE (ANNEXURE-A).

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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

The petitioner has called into question the order dated 04.03.2026 passed by the VII Additional City Civil and Sessions Judge, Bengaluru, in Ex.P. No. 200/2024, whereby an arrest warrant was issued against the petitioner/judgment-debtor.

2. Learned counsel appearing for the petitioner submits that the petitioner had filed an application under Section 47 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking an enquiry into the means and financial capacity of the judgment-debtor to satisfy the decretal amount. However, the said

application was kept in abeyance. Notwithstanding the pendency of the said application, the Executing Court proceeded to entertain the application filed by the respondent/decree-holder under Order XXI Rule 38 of the CPC and issued an arrest warrant against the petitioner.

2.1 Learned counsel for the petitioner contends that, before initiating coercive steps for the arrest and detention of a judgment-debtor in civil prison, the decree-holder is required to specifically plead and establish that the judgment-debtor has, or has had since the date of the decree, sufficient means to satisfy the decree or a substantial part thereof and has deliberately and wilfully neglected or refused to discharge the decretal liability despite having such means. In the absence of such pleadings and material establishing the requisite circumstances, the issuance of an arrest warrant would be impermissible in law.

2.2 In support of the said contention, learned counsel places reliance on the judgment of the Hon'ble Supreme Court in ***Jolly George Varghese and Another v. The Bank of Cochin***,

reported in ***(1980) 2 SCC 360***, and the judgment of the Madras High Court in ***Ramasamy v. Pushpa***, reported in ***2017 SCC OnLine Mad 14445***.

3. *Per contra*, learned counsel appearing for the respondents/decree-holders submits that the petitioners/judgment-debtors have sufficient means and resources to satisfy the decretal amount. It is further submitted that a sum of Rs.2,08,340/- has already been deposited before the Executing Court towards part satisfaction of the decree, which, according to learned counsel, demonstrates that the judgment-debtors possess sufficient means to discharge the remaining decretal liability.

3.1 On the aforesaid premise, learned counsel submits that no further enquiry or finding regarding the financial capacity of the judgment-debtors is warranted before issuance of the arrest warrant.

4. Heard the learned counsel appearing for the parties and perused the impugned order and the material placed on record.

5. The impugned order has been passed pursuant to the application filed by the respondent/decree-holder in I.A. No. 2 under Order XXI Rule 38 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking issuance of an arrest warrant against the petitioner/judgment-debtor.

6. A perusal of the affidavit filed in support of the said application does not disclose any specific averment regarding the present means and financial capacity of the judgment-debtor to satisfy the decree. Nor does it contain any allegation that the judgment-debtor, despite possessing sufficient means, has deliberately and wilfully neglected or refused to discharge the decretal liability.

7. The Hon'ble Supreme Court, in ***Jolly George Varghese and Another v. The Bank of Cochin***, reported in ***(1980) 2 SCC 360***, while considering the scope and ambit of Section 51 of the CPC, has held as follows:

> *"The words which hurt are 'or has had since the date of the decree, the means to pay the amount of the decree'. This implies, superficially read, that if at any time after the passing of an old decree the judgment-debtor had come by some resources and had not discharged the decree, he could be detained in prison even though at that later point of time he was found to be penniless.*

> *This is not a sound position apart from being inhuman going by the standards of Article 11 (of the Covenant) and Article 21 (of the Constitution). The simple default to discharge is not enough. There must be some element of bad faith beyond mere indifference to pay, some deliberate or recusant disposition in the past or, alternatively, current means to pay the decree or a substantial part of it. The provision emphasises the need to establish not mere omission to pay but an attitude of refusal on demand verging on dishonest disowning of the obligation under the decree. Here considerations of the debtor's other pressing needs and straitened circumstances will play prominently. We would have, by this construction, sauced law with justice, harmonised Section 51 with the Covenant and the Constitution."*

8. The Madras High Court in ***Ramasamy v. Pushpa***, reported in ***2017 SCC OnLine Mad 14445*** has also reiterated the aforesaid principle in the following terms:

> *"Now, it is firmly settled that even in an execution petition under Order XXI Rule 37 C.P.C., simply because the decree holder wishes that the judgment debtor should be made to count the bars of a Civil prison on account of his inability to pay the decree debt, the Court could not send the debtor to jail unless he has current ability to clear off the debt or he has malfide refusal or he has some other vice or mens rea apart from his failure to foot the decree."*

9. The principles enunciated by the Hon'ble Supreme Court make it clear that mere non-payment of the decretal amount does not, by itself, justify the arrest and detention of a judgment-debtor in civil prison. The decree-holder must

establish the existence of circumstances contemplated under Section 51 of the CPC. There must be material to demonstrate that the judgment-debtor has sufficient present means to satisfy the decree or a substantial part thereof and has deliberately refused or neglected to discharge the liability, or that the judgment-debtor has acted in a manner demonstrating bad faith in relation to the obligation under the decree.

10. It is equally necessary for the Executing Court to adhere to the procedural safeguards contemplated under Order XXI Rules 37 and 38 of the CPC. The issuance of an arrest warrant without first affording an opportunity to the judgment-debtor to show cause is not the ordinary course contemplated under Order XXI Rule 37. Dispensation with such notice and issuance of a warrant in the first instance must be supported by reasons satisfying the statutory requirements.

11. In the present case, a perusal of the application filed by the respondent/decree-holder does not disclose the necessary pleadings regarding the judgment-debtor’s means to satisfy the decree or the deliberate refusal or neglect to discharge the decretal liability despite possessing such means. Further, the

impugned order does not record any reasons as to why the opportunity contemplated under Order XXI Rule 37 of the CPC was dispensed with before issuing the arrest warrant.

12. The contention of the respondent/decree-holder that the deposit of Rs.2,08,340/- towards part satisfaction of the decree establishes the judgment-debtors' means to satisfy the remaining decretal amount cannot, by itself, dispense with the statutory requirements. The Executing Court is required to examine the relevant material and record appropriate findings regarding the judgment-debtor's means and the circumstances warranting the proposed coercive action.

13. The power to order the arrest and detention of a judgment-debtor in civil prison is a serious coercive measure and must be exercised with due care and circumspection. Such power cannot be invoked merely on account of the failure to satisfy the decree. The statutory safeguards are intended to ensure that a person is not deprived of personal liberty merely because of an inability to discharge a monetary obligation.

14. In the present case, the impugned order suffers from two fundamental infirmities: ***firstly***, the application filed by the decree-holder does not contain the requisite pleadings regarding the judgment-debtor's means and deliberate refusal to satisfy the decree; and ***secondly***, the Executing Court has not recorded reasons for dispensing with the opportunity of hearing contemplated under Order XXI Rule 37 of the CPC.

15. However, since the arrest warrant is being set aside on account of the aforesaid procedural and legal infirmities, the respondent/decree-holder cannot be deprived of the opportunity to pursue execution of the decree in accordance with law. It is, therefore, appropriate to grant liberty to the respondent/decree-holder to file a fresh application, if so advised, and have the same considered in accordance with law.

16. In the light of the above, the following:

O R D E R

I. The writ petition is ***allowed***.

II. The impugned order dated 04.03.2026, insofar as it directs the issuance of an arrest warrant against the petitioner/judgment-debtor, is hereby ***set aside***.

III. Liberty is reserved to the respondent/decree-holder to file a fresh application seeking appropriate relief in accordance with law. If such an application is filed, the Executing Court shall consider the same independently and in accordance with the provisions of the CPC, without being influenced by any of the observations made herein.

IV. Needless to observe, the application filed by the petitioner/judgment-debtor under Section 47 of the CPC, which has been kept in abeyance, shall also be considered along with the application of the respondent/decree-holder, after affording an opportunity of hearing to both parties.

V. All contentions of the parties are kept open.

Sd/-
(K. V. ARAVIND)
JUDGE

VN
List No.: 1 Sl No.: 6