HC-KAR

NC: 2026:KHC:60645
WP No. 28121 of 2024

CNR: KAHC010590752024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 28121 OF 2024 (GM-CPC)

BETWEEN:

MR. RAVINDRA K SHETTY
S/O.BHOJA SHETTY,
AGED 48 YEARS,
R/AT 9-66, BABA SHETTY HOUSE,
KADEKAR VILLAGE AND POST,
AMBALPADY, UDUPI TALUK,
UDUPI DISTRICT-576 101

…PETITIONER

(BY SRI. PRASANNA V.R., ADVOCATE)

AND:

1. DR ZAHEER AHMED
   SINCE DEAD BY HIS LRS
   TAHIRA,
   W/O. LATE ZAMEER AHMED,
   AGED MAJOR,

2. SHABNAM SHEIKH ASIF
   S/O. LATE ZAMEER AHMED,
   AGED MAJOR

3. TABSUM ZAMEER AHMED,
   S/O. LATE ZAMEER AHMED,
   AGED MAJOR

4. NAVEED ZAMEER AHMED,
   W/O. LATE ZAMEER AHMED,
   AGED MAJOR,

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA

RESPONDENTS NO.1 TO 4 ARE
RESIDING AT DIAMOND BRIGADE
APARTMENT, 3RD FLOOR,
SING MARG, AJJARKAD,
UDUPI-576 101

5. SMT. HEMA ASHOK,
W/O. ASHOKRAJ URS,
AGED ABOUT 61 YEARS,
PROPRIETOR,
DEEPAK FARMS, DEEPASHI,
OPP.INDIRA NAGAR CHURCH,
KUKKIKATTE, NO.76 –
BADAGABETTU VILLAGE,
UDUPI TALUK AND DISTRICT-576 101

…RESPONDENTS

(BY SRI. K PRASANNA SHETTY, ADVOCATE FOR R1 TO R4
R5 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED: 21.09.2024 ON IA NO.2 AND IA NO.8 IN COM.EX.C.NO. 47/2023 ON THE FILE OF LEARNED PRINCIPAL DISTRICT JUDGE / COMMERCIAL COURT AT UDUPI ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 01.09.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CAV ORDER

The present writ petition is filed aggrieved by the order passed on I.A.No.2 and 8 in Com.Ex.No.47/2023 dated 21.09.2024 by the Principal District Judge, Commercial Court at Udupi. The petitioner is a third party. He has filed an application under Section 151 and under Order XXI Rule 46 of CPC to recall the order dated 17.01.2024.

2. It is the case of the petitioner that the garnishee notice is served on the applicant, directing him to deposit rent of Rs.75,000/- per month payable to the judgment debtor. Further, the applicant has filed detailed objections to the garnishee order and an application seeking to recall the order dated 11.04.2023. It is the case that the alleged garnishee is not a garnishee in the strict sense of the term. A garnishee is a person who is under obligation to pay the amount to the judgment debtor. However, as per the agreement held by the applicant, the amount payable is not to the judgment debtor but to a third party. As such, the applicant of IA.Nos.2 and 8 cannot be termed as a garnishee within the meaning of the term. He relies upon the lease agreement dated 15.03.2021,

which is for a period of 10 years. The said agreement is entered between the judgment debtor and one Raveendra K. Shetty who is the applicant. As per the said agreement, the security deposit of Rs.10,00,000/- is offered by the lessee and agreed to pay rent of Rs.75,000/- per month. As per condition No.5 of the agreement, the lessee shall pay rental amount of Rs.75,000/- to the bank account of one Baskar A. Palan account maintained with Bharat Bank, Udupi Branch, which is an unregistered document. The trial court by order impugned had dismissed the application. While dismissing the application the trial court had observed that the decree holder had obtained the order of attachment of property in question, even before passing the judgment. Order of attachment is dated 29.04.2021. Said order of attachment is subsequent to the alleged lease agreement. However, defendant in the suit being aware of the lease, should have brought the said fact before the court as the subject matter was already attached. Even now, it is noticed that landlord was party to the proceedings and trial court has considered all available defences of the landlord and found at the time of passing a decree that order of

attachment was to be confirmed and continued. Thereby, the alleged garnishee at this stage capable of raising any contentions more than what the landlord would have raised by itself restricts the right of the tenant.

3. It is observed that the defence of the applicant depends upon the lease agreement dated 15.03.2021. Said agreement being for a period of 10 years, obviously requires registration. Non-registration of the document invalidates its contents. Thereby contents of the documents are inadmissible for any purpose. Accordingly, claim of the applicant that applicant is bound to pay rent to any person other than judgment debtor cannot be entertained. In other words, said plea of the tenant is obviously intended to overcome lawful claim. As such, calculated approach of both judgment debtor and her tenant *prima facie* found fraudulent, for which the judgment debtor if so advised has every right to prosecute for the reliefs available under law. It is submitted by the learned counsel for decree holder that decree holder was a cancer patient and required money for his treatment and then the judgment debtor deprived him of his legal dues and caused

hardship, so much that the decree holder had a difficulty to meet his treatment expenses. Under these circumstances, the intention of the judgment debtor to avoid payment cannot be encouraged on any grounds. The notice of attachment was ordered in this petition and the applicant being aware had approached this Court on 17.06.2023. Obviously, there are no material to disbelieve that the applicant was not aware of the proceedings. Hence, the court do not find any reasons and accordingly dismissed the application. Aggrieved thereby, the applicant is before this court.

4. Learned counsel appearing for the petitioner submits that Order XXI Rule 46 of CPC provides for attachment of debt, share, and other movable property not in the possession of the judgment-debtor. In such cases, the court is required to pass an order of attachment of such property and cause notice to the person who possess such property is attached. In the present case, no such order of attachment has been made by the Executing Court. Therefore, the order impugned dated 11.04.2023 is bad in law. The Executing Court ought to have accepted the IA.No.2 filed by the petitioner seeking to recall

the order dated 11.04.2023. Order XXI Rule 46A of CPC provides for the issuance of notice to the garnishee, which requires the Court to issue notice to the person whose property is attached under Order XXI Rule 46 CPC. When the Court has passed an order directing the petitioner to deposit rental to the Court, a notice was required to be issued prior to passing of such order. Hence, the order dated 11.04.2023 which is sought to be recalled by the petitioner is liable to be interfered. Learned counsel further submits that there is no dispute that the petitioner is a tenant of the building premises in terms of the Rent agreement dated 15.03.2021 which being produced by the decree-holder himself in the Executing Court under which agreement, the rent payable is only Rs.50,000/- to one Bhaskar, amount of Rs.75,000/- after deducting the charges of medicines etc. When such being the case, the Executing Court could not have directed the petitioner to deposit the entire sum of Rs.75,000/- on or before 05th of every month before the court by issuing the garnishee order. The Decree Holder filed IA.No.6 U/s 151 of CPC seeking issuance of the arrest warrant against the petitioner/garnishee without even serving a copy to

the counsel for the petitioner on record. Therefore, the petitioner on 20.02.2024 had filed I.A.No.8 seeking to recall the order dated 17.01.2024, application has been allowed by the Executing Court on 20.02.2024 itself. Therefore, rejecting the IA.No.8 again by-passing order impugned is an error apparent on the face of the record and the same is liable to be set aside.

5. Learned counsel further submits that the finding of the Executing Court that the petitioner/garnishee instead of filing of objections, has filed I.A.No.2 seeking recalling the garnishee order is incorrect, as the petitioner on 17.06.2023 itself filed objections. Therefore, the Executing Court has not applied its judicial mind to the application filed by the petitioner. The finding of the Executing Court that the document relied upon by the petitioner; rental agreement dated 15.03.2021 is unregistered as the same is inadmissible in evidence due to its non-registration is bad in law. When the Court has accepted the very same agreement so as to pass the garnishee order, directing the petitioner to deposit rent before the Court, the conditions incorporated therein could not have been ignored. The finding of the Executing Court that the plea of the tenant is

obviously intended to overcome the lawful claim of the Decree Holder and therefore such calculated approach of both the Judgment Debtor and the tenant *prime facie* found fraudulent and bad. It is submitted that the order impugned needs to be set aside.

6. Learned counsel appearing for the respondent submits that the Executing Court has considered all the aspects and rightly dismissed the petition. This application is filed with an intention to protect the judgment debtor. The document is an unregistered document which clearly shows that it is for a period of 10 years and the court has rightly disbelieved the same.

7. Having heard the learned counsel on either side, perused the entire material on record. A garnishee is a person who owes a debt to the judgment debtor. Garnishee proceedings enable the decree holder to reach that debt towards the satisfaction of the decree. A tenant may therefore be proceeded against in respect of rent payable to the judgment debtor, although he was not a party to the suit. The decree holder can, however, reach only the debt legally

recovered by the judgment debtor. The proceedings cannot create a liability which the garnishee does not otherwise owe. Order XXI Rule 46 CPC provides for attachment of a debt by written prohibitory order. It does not prescribe a prior hearing before attachment. A direction compelling payment is governed by the further procedure under Rule 46A of CPC, which offers the garnishee an opportunity either to pay the attached debt to the court or to appear and show cause, where liability is disputed. Rule 46C of CPC provides for determination of such a question. In the present case, the initial order went beyond a prohibitory attachment and directed the petitioner to deposit rent without prior notice. Before issuing such a direction, the court ought to have followed the prescribed procedure. Nevertheless, the matter did not end with that order. The petitioner subsequently appeared, sought its recall, produced his defence based on the lease deed and obtained a consideration of these objections by the Executing Court. The impugned order is thus an order passed after hearing the challenge to the liability sought to be enforced. The initial omission cannot be treated as immaterial merely because an

application subsequently entertained. What matters is whether the petitioner received an effective opportunity to contest liability and whether his objections were determined. Here the Executing Court considered both the objection concerning notice and the contention founded on a lease deed. No contention is shown to have remained unexamined because of the earlier absence of notice. In these circumstances, setting aside the order merely to repeat that opportunity would serve no useful purpose. As regards the lease deed, a stipulation requiring payment to another person does not, by itself, establish the rent belongs independently to that person. The person authorized to receive payment need not necessarily be the person legally entitled to the debt. The relevant question is whether the stipulation merely regulates payment on behalf of the judgment debtor or transfers entitlement to rent. An independent claim to the debt under the attachment falls for consideration under Rule 46D and 46E of CPC. A mere designation of the recipient does not require release of the attachment. The Executing Court has considered the petitioner's reliance upon the lease deed. Reiteration of the

requirement to pay another person, without demonstrating an error in the course of determination of the underlying entitlement to rent, furnishes no ground for interference. The petitioner's reliance on Rule 46 of CPC consequently does not establish the attachment amount is beyond the reach of the execution proceedings. The trial Court rightly considered all aspects and did not recall the order. Hence, this Court do not find any reason to interfere with the well-considered order passed by the Executing Court. Hence, this Court is passing the following:

ORDER

i. Accordingly, the writ petition is ***dismissed.***

ii. Pending I.As if any in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

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List No.: 1 Sl No.: 5
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