

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 30th DAY OF JUNE 2020

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WP NO.145304 OF 2020 (GM-CPC)

BETWEEN

SIDDARTHA HOSAMANI
S/O CHANNAPPA HOSAMANI
AGE: 42 YEARS,OCC: BUSINESS
R/O: # 8, MIG-2,KHB MULAGUNDA ROAD
GADAG,TQ: DIST: GADAG

... PETITIONER

(BY SRI. PRAKASH R BADIGER, ADV.)

AND

H.C. BASAVARAJAPPAS/O. LATE CHEENEGOUDA
AGE: 66 YEARS,OCC: AGRICULTURE
R/O: # 4383/L-22,HARSHA CABLE
10TH CROSS, ST. MARRIED ROAD
N. R. MOHALLA, AT: MYSURU
TQ: DIST: MYSURU

... RESPONDENT

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO KINDLY QUASH OR ISSUE AN ORDER OF CERTIORARI QUASHING THE ENTIRE PROCEEDINGS IN EX.PET.NO.69/2018 ON THE FILE OF PRL.SENIOR CIVIL JUDGE & C.J.M GADAG AT:GADAG, VIDE ANNEXURE-C.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The top noted writ petition is filed by the Judgment debtor seeking writ of certiorari to quash the proceedings pending in EP.No.69/2018 on the file of the Prl. Senior Civil Judge, Gadag.

2. Facts leading to the top noted writ petition are as under:

3. Present writ petition is filed questioning the very initiation of the execution proceedings in Execution Petition.No.69/2018.

4. Grievance of the petitioner before this Court is that petitioner has paid entire decretal amount to the respondent-decree holder as per the terms reported in Execution Petition.No.43/2015.

5. Further grievance of the petitioner before this Court is since the matter is compromised in earlier execution petition, the respondent-decree holder cannot maintain second execution petition and on this set of facts,

present petitioner-judgment debtor is before this Court seeking quashing of the execution proceedings pending in Execution Petition.No.69/2018.

6. Heard the counsel for the petitioner and perused the records.

7. Counsel for the petitioner would place on record the compromise petition filed in earlier Execution Petition.No.43/2015.

8. On perusal of the compromise petition in Execution Petition.No.43/2015, it is forthcoming that in the execution petition, the petitioner/judgment debtor has settled the matter with the respondent-decree holder and as per the terms of settlement he has agreed that he would pay the entire Rs.5,00,000/- in ten monthly installments of Rs.50,000/- each. Prima facie, in this back ground, if the grounds urged in the writ petition are examined, the contention of the petitioner that there is final settlement in Execution Petition.No.43/2015 cannot be accepted. In the earlier execution petition, parties are arrived at

compromise by resolving the mode of payment to be made. The petitioner has not at all whispered as to whether he has paid monthly installment or not.

9. I am of the view that second execution petition is very much executable and the respondent-decree holder is entitled to initiate recovery proceedings based on compromise recorded in Execution Petition.No.43/2015. It is also worth to note that in the present writ petition, the petitioner is not calling in question any order passed by the executing Court. On the contrary he is virtually seeking quashing of the proceeding pending in Execution Petition.No.69/2018. Such a relief cannot be granted by exercising discretionary powers under Articles 226 and 227 of Constitution of India. The grounds urged in the writ petition are devoid of merits and accordingly, the writ petition is dismissed. No order as to cost.

Sd/-
JUDGE

VB/-