



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO.22837 OF 2022 (GM-CPC)

BETWEEN:

1. SMT. REKHA G. PATHAK
W/O G.N. PATHAK
AGED ABOUT 59 YEARS
R/AT FLAT NO.112, SRI SAI PARADISE
KOTHANOR, MAIN ROAD, J P NAGAR
8TH PHASE, BENGALURU 560062.

...PETITIONER

(BY SRI. H. SURESH, ADV.,)

AND:

1. SIDDARTH MINERALS
REP. BY ITS MANAGING PARTNERS
R. GANGADHAR NO.7, KATHA NO.126
SY NO.34/5B, CHANNASANDRA
OPP. N S COLLGFE
UTTARAHALLI HOBLI
BENGALURU 560061.
2. R. GANGADHAR
S/O LATE REVANNA
AGED ABOUT 47 YEARS.
3. SMT. S. GEETHA
W/O R. GANGADHAR
AGED ABOUT 41 YEARS.

NO.2 & 3 ARE R/AT NO.136
4TH A CROSS, BSK 3RD STAGE
3RD PHASE, ITTAMADU VILLAGE
BENGALURU 560085.

...RESPONDENTS

(BY SRI. PRADEEP H.S. ADV., FOR C/R3)





THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER DATED 17.10.2022 AS PER ANNEXURE-H IN I.A. NO. 1/2020 PASSED IN MISC. PETITION NO 355/2020 BY THE XVTH ADDL CITY CIVIL AND SESSIONS JUDGE AT BENGALURU, (CCH-3) AND FURTHER TO DISMISS I.A.NO 01/2020 AS PRAYED FOR. GRANT AN INTERIM ORDER TO STAY ALL FURTHER PROCEEDINGS IN MISC.PETITION NO 355/2020 MUCH LESS THE I.A.NO 01/2020 PASSED BY THE CITY CIVIL AND SESSIONS JUDGE AT BENGALURU, (CCH-3).

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

ORDER

This writ petition is filed under Article 227 of the Constitution of India seeking prayer to quash the order dated 17.10.2022 passed on I.A.No.1/2020 in Misc. No.355/2020 by the XV Addl. City Civil and Sessions Judge, Bangalore whereby the application filed by the respondent under Section 151 read with Section 141 of the Code of Civil Procedure, 1908 was allowed by staying the execution and operation of the decree passed in O.S.No.1681/2017 in Ex.No.1703/2019 till the disposal of the Misc.No.355/2020.

2. Brief facts giving rise to filing of this petition are that the petitioner filed O.S.No.1681/2017 against the



respondents herein for recovery of money. Though the notice was duly served on the respondents, they have failed to appear in the proceedings. Hence, the Civil Court has passed ex parte judgment and decree in favour of the petitioner and directed the respondents to pay Rs.17,47,606/- with interest at the rate of 18% p.a. from the date of Cheque till realization. The petitioner has initiated execution proceedings in Ex. Case No.1703/2019 wherein the Execution Court has allowed the application for attachment of immovable property. Thereafter, the petitioner has filed another application under Order XXI Rule 64 of the CPC for sale of properties of the respondents / judgment debtors. The said application also came to be allowed on 05.04.2022, the conduct of the public auction was scheduled on 10.06.2022. It is submitted that the respondents have filed Misc.No.355/2020 seeking to set aside the ex parte judgment and decree and also filed I.A.No.1/2020 under Section 151 read with Section 141 of the CPC seeking stay of execution proceedings. The Trial Court has allowed I.A.No.1/2020, by staying the judgment



and decree in O.S.No.1681/2017. Being aggrieved by the said order, the present petition is filed.

3. Sri.H.Suresh, learned counsel appearing for the petitioner submits that the impugned order passed by the Trial Court is erroneous and contrary to the material available on record. The Trial Court has failed to appreciate the fact that the present application is filed after a lapse of 1245 days from the date of judgment and decree. It is further submitted that the respondents were well aware about the suit proceedings and have evaded the service of notices, waited till the judgment is passed and orders are passed in the execution proceedings and when their property was put for public auction, they have filed miscellaneous petition and also filed this application seeking for stay of the judgment and decree in O.S.No.1681/2017. These aspects are not properly considered by the Trial Court while passing the impugned order. It is further submitted that the conduct of the respondents disentitle any relief. He seeks to allow the writ petition.



4. Per contra, Sri.Pradeep H.S., learned counsel for the respondent No.3 submits that the respondents have specifically pleaded in the written statement that the respondents have not been served with notice in O.S.No.1681/2017 and the petitioner herein has given incorrect address in the plaint. The Trial Court in the suit has incorrectly held that the service of notice is sufficient, the said notice was never served on the respondents. It is further submitted that the petitioner is well aware that the respondents are not residing in address No.7, Khatha No.126, Sy.No.34/5B, Channasandra, Opp RNS College, Uttarahalli, Bengaluru - 560 061 and knowing fully well, the petitioner has given incorrect address. The respondents are residing in address No.136, 4th A Cross, BSK 3rd Stage, 3rd Phase, Ittamadu Village, Bengaluru - 560 085. It is also submitted that knowing fully well, the petitioner has obtained exparte decree and the respondents have got a good case on merits in the suit. It is contended that the miscellaneous petition filed by the respondents seeking to



recall the judgment and decree is pending consideration before the Trial Court and during the pendency of miscellaneous petition, if the execution proceedings is allowed to be continued by executing the judgment and decree, their petition filed under Order IX Rule 13 of the CPC would render infructuous and it would cause great injustice to the respondents. He seeks dismissal of the petition.

5. I have heard the learned counsel for the petitioner, learned counsel for the respondent No.3 and perused the material available on record. The parties do not dispute that the petitioner has filed O.S.No.1681/2017 for recovery of money and the said suit came to be decreed exparte directing the respondents to pay Rs.17,47,606/- along with interest at the rate of 18% p.a. It is also not in dispute that the petitioner has initiated execution petition to execute the decree and in the execution petition, the Execution Court has passed order for attachment of the property and also order for sale of the property in question and sale is also scheduled. During the interregnum, the respondents have



moved the Civil Court and have filed miscellaneous petition under Order IX Rule 13 of the CPC seeking to set aside the judgment and decree dated 25.09.2019 passed in O.S.No.1681/2017 and also filed an application under Section 151 read with 141 of the CPC seeking to stay the judgment and decree passed in O.S.No.1681/2017 dated 25.02.2019. On close scrutiny of the averments made in the miscellaneous petition and the application, it is evident that the miscellaneous petition filed for setting aside of the judgment and decree is pending and if the Execution Court is allowed to execute the judgment and decree dated 25.02.2019, the miscellaneous petition filed by the respondents would render infructuous. The respondent has specifically contended in the miscellaneous petition that suit summons was never served on the defendants and the address shown in the plaint cause title is incorrect. When things stood thus, ultimately the parties to the proceedings are required to be provided with sufficient opportunity to put forth their case in the miscellaneous proceedings. It would be appropriate to stay the judgment and decree passed in



O.S.No.1681/2017 dated 25.02.2019 during the pendency of the miscellaneous petition. The contentions urged by the learned counsel for the petitioner that the respondents have approached the Court belatedly and on flimsy grounds, the said contentions are required to be considered by the Court in the miscellaneous proceedings. This Court is of the considered view that if the respondents are not allowed to put forth their case in the miscellaneous proceedings, it would not meet the ends of justice. Ousting the respondents at this stage on technical grounds, would result in depriving them of placing their substantive plea in the miscellaneous proceedings. The Trial Court has considered the material available on record and has recorded the finding. This Court do not find any error or perversity in the finding recorded by the Trial Court calling for interference in this petition.

6. At this stage, learned counsel for the petitioner submits that the respondents are unnecessarily taking adjournments in the miscellaneous proceedings. In reply,



learned counsel for the respondent submits that they would co-operate for early disposal of the miscellaneous proceedings. The said submission is taken on record. The Trial Court is directed to take up the miscellaneous proceedings on priority basis.

7. For aforementioned reasons, there is no merit in the contentions urged by the petitioner.

Accordingly, the writ petition is disposed of.

**Sd/-
JUDGE**

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