

HIGH COURT OF KARNATAKA**Bench: Justice Jyoti Mulimani****Date of Decision: 20 January 2024**

WRIT PETITION NO. 201451 OF 2022 (GM-CPC)

SRI. AMRESH ...PETITIONER**VERSUS****SRI. NAGAPPA ...RESPONDENT****Legislation and Rules:**

Article 227 of the Constitution of India

Section 151 of the Civil Procedure Code (CPC)

Subject:

Writ petition challenging the order of the Executing Court which dismissed the application for depositing balance sale consideration in a specific performance suit.

Headnotes:

Specific Performance and Execution Proceedings – Rejection of Application to Deposit Balance Sale Consideration – Petitioner's challenge against the order of the Executing Court, which dismissed his application for depositing balance sale consideration in a specific performance case. [Paras 2, 5-6]

Closure of Execution Proceedings – Executing Court closed execution proceedings temporarily due to non-effective steps by the decree holder, with liberty to reopen after obtaining Commissioner's report. [Para 2]

Application under Section 151 of CPC – Filed by decree holder for permission to deposit balance sale consideration. Executing Court dismissed the application as it was filed without reopening the case. [Paras 2, 5]

High Court's Consideration – Whether rejection of the application by the Executing Court was just and proper. [Para 4]

High Court's Decision – Order of Executing Court set aside. High Court directed that upon application for reopening the execution proceedings, the Executing Court should accept the application and pass appropriate orders for reopening the case and accepting the balance sale consideration amount. [Paras 6-8]

Referred Cases: None.

Representing Advocates:

Sri. Arunkumar Amargundappa for the petitioner

Smt. Rekha Patil, on behalf of Sri. G.G. Chagashetti, for the respondent

ORDER

Sri.Arunkumar Amargundappa., learned counsel for the petitioner and Smt.Rekha Patil., learned counsel on behalf of Sri.G.G.Chagashetti., for the respondent have appeared in person.

2. The Brief facts are these:

The petitioner being the plaintiff filed a suit for specific performance against the defendant. The Trial Court vide Judgment and Decree dated:31.10.2014 decreed the suit and directed the defendant to execute the register sale deed in favor of the plaintiff by receiving the balance sale consideration amount of Rs.11,000/- (Rupees Eleven Thousand only). The defendant failed to execute the sale deed. Therefore, the plaintiff was constrained to file the Execution Petition in No.55/2015. The executing Court appointed the Court ommissioner to execute the sale deed. On 22.10.2021, the Executing Court observed that the decree holder had not taken effective steps to execute the sale deed. Hence, closed the execution proceedings for the time being and also granted the liberty to reopen the proceedings after obtaining the Commissioner's report.

As things stood thus, the decree holder moved an application for advancement by filing an application under Section 151 of CPC seeking permission to deposit the balance consideration amount. The Executing Court on 09.02.2022, dismissed the application as not maintainable on the ground that the decree holder has not filed an application for reopening of the

case. It is this order that is called into question in this Writ Petition on several grounds as set-out in the Memorandum of Writ Petition.

3. Learned counsel for the petitioner and the respondent have urged several contentions. Heard, the contentions urged on behalf of the respective parties and perused the Writ Papers with utmost care.

4. The point that requires consideration is whether the rejection of the application is just and proper.

5. The facts are sufficiently stated and do not require reiteration. It is not in dispute that the suit came to be decreed back in the year 2014 i.e., on 31.10.2014. It is also not in dispute that the decree holder initiated execution proceedings. However, on account of not taking effective steps to execute the sale deed the Execution Petition proceedings were closed for the time being vide order dated:22.10.2021. The decree holder sought permission to pay balance amount and the same was rejected.

6. Sri.Arunkumar Amargundappa., learned counsel for the petitioner in presenting his arguments submits that the Court Commissioner is refusing to execute the sale deed because of non-payment of the balance sale consideration amount. He also argued by saying that the decree holder is ready to deposit the balance sale consideration amount. However, on account of the closure of the execution proceedings he is unable to pay the balance sale consideration amount. Counsel further submits that the decree holder shall make an application for reopening of the case.

The oral submission made on behalf of the decree holder is placed on record.

If the Decree holder makes an application for reopening of the execution proceedings, the Executing Court may accept the applications and pass appropriate orders for reopening of the case and accept the balance sale consideration amount. For the reasons stated above, the order passed by the Executing Court is liable to be set-aside. Accordingly, it is set-aside.

7. The Writ of Certiorari is ordered. The order dated:09.02.2022 passed by the Prl. Civil Judge & JMFC, Sindhanur in Execution Petition No.55/2015 vide Annexure-E is quashed.

8. With the above observation, the Writ Petition is allowed.

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