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IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT DHARWAD

DATED THIS THE 24<sup>TH</sup> DAY OF NOVEMBER 2008

BEFORE

THE HON'BLE MR.JUSTICE N.KUMAR

WRIT PETITION No. 16935/2007 (GM-CPC)

BETWEEN:

Sri G.P.Venkata Naidu,  
S/o Peddapaiah,  
Aged about 66 years,  
Residing at No.2,  
Muddapur village,  
Hospet Taluk, Bellary Dist.

...Petitioner

(By Sri. S.V.Shastri & Ravi Hegde, Advs.)

AND:

1. State Bank of Mysore,  
Kampli Branch, Kampli,  
Represented by its Manager.

2. Sri S.Sundaravardalu,  
S/o Nagaiah, Age: Major,  
Residing at No.2,  
Muddapur village,  
Hospet Taluk,  
Bellary District.

...Respondents

(By Sri Putige R.Ramesh, Adv. for R1 - absent)



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This petition is filed under articles 226 and 227 of the Constitution of India praying to quash the order passed in Ex.No.177 of 2004 dated 10.09.2007 vide Annx-H, on the file of Civil Judge (Sr.Dn.) & JMFC, Hospett and the order dated 14.09.2007 vide Anneuxre-J on the file of the Civil Judge (Sr.Dn.) & JMFC, Hospet in Ex.No.177/2004.

This petition coming on for hearing this day, the Court made the following:

ORDER

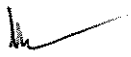
The petitioner has challenged in this writ petition, the order at Annexure-H dated 10.09.2007 and the order at Annexure-J dated 14.09.2007 passed by the Executing Court in Execution No.177/2004.

2. The petitioner is the guarantor and the 2<sup>nd</sup> respondent is the principal borrower. The 1<sup>st</sup> respondent-Bank advanced loan to the 2<sup>nd</sup> respondent. For due repayment of the loan the petitioner stood as a guarantor. The land bearing R.S.No.35 measuring 10 acres situated at No.2 at Muddapur village, Hospet Taluk was offered by the 2<sup>nd</sup> respondent as a security for due repayment of the loan. The security was by way of mortgage by depositing the title



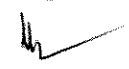
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deeds. When the amount of loan was not paid, the 1<sup>st</sup> respondent-Bank filed O.s.No.2/1994 for a decree against the petitioner and the 2<sup>nd</sup> respondent; for sale of the mortgaged property and also for a personal decree against the defendants if the amounts are not realised from the sale of the mortgaged property. After contesting the suit, a preliminary decree came to be passed directing the sale of the mortgaged property. Thereafter, final decree proceedings was initiated. When the decree was not satisfied, the 1<sup>st</sup> respondent filed an execution petition for the sale of the mortgaged property. The mortgaged property was sold in a public auction for a sum of Rs.4,55,900/-, whereas the amount due was Rs.3,49,409/-. The decretal amount was paid to the Bank and the balance amount was paid to the 2<sup>nd</sup> respondent-the principal borrower. Thereafter, a memo came to be filed by the Bank to record the full satisfaction of the decree. It is thereafter, a claim petition came to be filed by a third party contending that the property which was the subject matter of the mortgage, which was sold, was granted to him under the provisions of the Karnataka Land Reforms



Act and that the said property did not belong to the 2<sup>nd</sup> respondent. The claim petition was allowed and the sale was set aside. The said order was challenged in appeal before this Court in appeal, which came to be dismissed. It is thereafter, the decree-holder-Bank filed one more execution petition and sought for arrest of the judgment debtors. The 2<sup>nd</sup> judgment debtor i.e., the petitioner herein appeared, filed his objections contending that the second execution petition is not maintainable; there is no personal decree, and therefore, the order of arrest issued is one without jurisdiction; and that straight away no warrant for arrest could have been issued.

3. The Trial Court after hearing both the parties held that the second execution petition is maintainable. It held that though the decree-holder had filed a memo to record the full satisfaction of the decretal amount, when the sale of the mortgaged property was set aside, the amount received by the bank was directed to be paid to the auction purchaser, and the decree stood unsatisfied, and therefore, notwithstanding the filing of such memo, when the decree is




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not satisfied, the second petition is maintainable. There is no infirmity in the said finding which calls for interference.

4. Insofar as contention that there is no personal decree for the money is concerned, it was pointed out that the suit was for grant of money decree and for sale of mortgaged property and in the event of sale proceeds not being realised to grant a personal decree. In the light of the undisputed facts, when the mortgage deed was invalid, it cannot be said that there cannot be a decree or there was no decree finally passed against the judgment debtors and therefore such objections was overruled. After overruling the objections the court has proceeded to issue the arrest warrant.

5. The contention that straightaway the arrest warrant was issued is without any substance because when the petitioner sought for issue of a arrest warrant, straightaway, the court did not issue the arrest warrant but issued notice to the judgment debtor. After service of notice, judgment debtor appeared, filed objections contending that the



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execution petition is not maintainable and that there is no personal decree. It is only after overruling such objection the arrest warrant is issued. Therefore, the above contention has no substance. The impugned order cannot be found fault with. Therefore, there is no merit in the writ petition.

Accordingly, writ petition is dismissed.

Sd/-  
Judge

Kms\*