

IN THE HIGH COURT OF KARNATAKA, BANGALORE

DATED THIS ON THE 12 TH DAY OF July 2001

BEFORE

THE HON'BLE MR. JUSTICE N.KUMAR

CRP No 3730 OF 1999

c/w

CRP No 3731 OF 1999

c/w

CRP No.3732 OF 1999

**BETWEEN**

**IN CRP No.3730/99**

LAKSHMAMMA SESHADRI  
MAJOR, W/O LATE B.SESHADRI  
R/A 8/1, RAJARAM MOHAN ROY ROAD  
BANGALORE-25

**IN CRP No.3731/99**

Chandrasekhar,  
Partner,  
Kabadi Bar & Restaurant,  
No.15, (Ground Floor)  
Rajaram Mohan Roy  
Road, Bangalore-25

**IN CRP No.3732/99**

Harish  
Partner Harish Wines  
N.7/4, Rajaram Mohan Roy Road,  
Bangalore -25

... PETITIONERS

(By Sri: VIPINKUMAR MUNEGOWDA, ADV)



AND :

- 1 B VENKATASUBBAMMA  
MAJOR, W/O LATE B.VENKATA GOWDA  
NO.10, 7TH CROSS  
CUBBONPET  
BANGALORE-2
  
- 2 B V CHANDRASEKHARA GOWDA  
MAJOR, S/O B.VENKATA GOWDA  
R/A BENDAGANAHALLI VILLAGE  
HOSKOTE TQ.,  
BANGALORE DIST.
  
- 3 B V RAMACHANDRA GOWDA  
MAJOR, S/O LATE B.VENKATA GOWDA  
NO.38, I MAIN ROAD  
DOMLUR LAYOUT  
BANGALORE

... RESPONDENT(S)

(By Sri:S V RAGHAVACHAR FOR R1  
Sri.G.D.ASHWATHANARAYANA FOR R.2)

These Civil Revision Petitions are filed under Sec.115 of CPC against the order dated 14.10.99 passed in EX.1027/96 on the file of the XIX Addl. City Civil Judge, Bangalore, dismissing the application filed under Sec.151 of CPC to recall the order of issuance of arrest notice.

These Civil Revision Petitions coming on for admission this day, the court made the following;



ORDER

The petitioners have challenged in these revision petitions the order dated 14.10.99 passed by the court below refusing to recall the order for arrest of the petitioners made on 14.1.99.

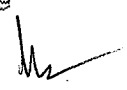
2. The first respondent herein Smt.Venkatasubamma has filed a suit in O.S.No.1183/1984 for partition and separate possession of her husband's share in the joint family properties. In the said suit, she made an application for maintenance. After contest, the said application was allowed awarding a maintenance amount of Rs.1,000/- per month. The said order was challenged before this court in CRP No.6423/90 and the said CRP was partly allowed and the amount of maintenance payable was reduced to Rs.400/- per month from the date of the filing of the said application till the disposal of the suit. Accordingly, she was entitled to maintenance at the rate of Rs.400/per month from July, 1984 onwards. When the



defendants did not pay the aforesaid amount, she was constrained to file an Execution Petition No.1027/96 for executing the said order of maintenance. In the said execution proceedings she sought for an order to the garnishees namely the tenants who are in occupation of the joint family/properties to deposit the rent payable by them into the court.

3. The petitioners in these three revision petitions are the tenants in occupation of the various portions of the premises. Notice was sent to these tenants by the court, calling upon them to show cause as to why not an order directing them to pay the monthly rent into the court, be passed. All the petitioners were served. They entered appearance and engaged their counsel on 4.7.97. They replied to the notice. The said reply filed by them are identical. One such reply is asunder;

" It is true that the garnishee is the tenant. It is the practice of the landlord/judgment debtor to collect the rent once in a year in advance as he requires huge amount to invest in agricultural operations. Hence, the



tenant has paid the entire rent due for the year 1997 in January, 1997 itself. Hence, till January 1998 the garnishee is not liable to pay the rent to the landlord. Regarding the rent, subsequent to December 1997, it will be deposited in the court, if this Hon'ble Court so orders."

4. After filing the said reply, neither the garnishees nor their counsel appeared to substantiate the objections they have raised. Therefore, the court below on consideration of the said objections, proceeded to pass order on 20.11.1997. The court held that the garnishees did not substantiate their contentions. Therefore, objections over-ruled and they were directed to deposit the rent in the court regularly. The said order dated 20.11.1997 has not been challenged till today and it has become final. After the said order, on 15.1.1998, the court directed the office to issue directions to the garnishees as per the order and adjourned the case to 12.3.1998. On 12.3.1998, the court passed an order calling for attachment of amount. Further, on 8.6.1998, the court directed the cash branch to note the deposits made by the said garnishees if any. Thereafter, the cash branch put up a note saying that on verification it is

found, that no amount has been deposited as per the orders of the court. It is thereafter, the court was constrained to issue the arrest warrant by its order dated 20.8.1998. After coming to know of the said arrest warrant, on 27.5.1999 nearly nine months thereafter, the garnishees made an application for recalling the said order. The court below after considering the rival contentions, after elaborately referring to and noticing the earlier proceedings and the conduct of the parties, has rejected the said application on the ground that no case is made out. It is against the said order, the three garnishees have preferred these revision petitions.

5. Learned counsel for the petitioners submit firstly as, no liability is fixed on the garnishees, the court below has committed an error in issuing the arrest warrant for non-deposit of the rent; Secondly, it was contended that before the issue of arrest warrant one more notice should have been given to the garnishees as contemplated under Order 21 Rule 37 CPC and therefore, the impugned order is

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violative of principles of natural justice and the mandatory provisions of Order 21 Rule 37 CPC; Thirdly, he contends that when the garnishees denied the liability, the court ought to have held an enquiry to fix the liability as contemplated under Order 21 Rule 46(c) of CPC and, therefore, the impugned order is liable to be set aside.

6. In so far as the determination of the liability of the garnishees is concerned, the said objection is wholly misconceived. The liability to pay the amount to the decree holder is that of the judgement debtor and the amount due to the judgement debtor were in the hands of the garnishees. The garnishees were directed to deposit the money payable, to the judgment debtor into the court. It is not a direction issued for discharge of the liability of the garnishees to the decree holder. Therefore, the argument that without fixing the liability, the garnishees should not be directed to deposit the rent, has no substance. That apart, in the objections filed by the garnishees in reply to the notice



issued to him, in categoric terms he has stated that regarding the rent subsequent to December 1997 it will be deposited into the court if this Hon'ble Court so orders. This objection was filed on 4.7.1989. On consideration of this objection, the court passed the order on 20.11.1997 directing the garnishee to deposit the rent into the court on the basis of the undertaking made by the garnishees in the statement of objections. The garnishees are aware of the rent payable by him to the landlord namely the judgment debtor. It is that rent which was expected to be deposited into the court atleast from December 1997 onwards. Admittedly, this has not been done till today.

7. In so far as the grievance of the petitioners that a notice under Order 21 Rule 37 should have been issued to the garnishees concerned, that provision provides for issue of notice to the judgment debtor before the judgment debtor is ordered to be arrested. The garnishee is not the judgment debtor in this case. Therefore no notice as contemplated under Order





21 Rule 37 CPC be issued to the garnishee before ordering for arrest. It is not in dispute in this case that notice has been issued to the garnishee asking him to show cause why an order could not be passed against him. It is in pursuance of this order, they appeared through the counsel, filed objections and thereafter, an order came to be passed. It is for the disobedience of the order passed by the trial court, he has been ordered to be arrested. There is no violation of the principles of natural justice involved in this case. No error is committed by the trial court.

8. The other contention is that trial should have been conducted as contemplated under Order 21 rule 46(c) which has also no substance, because that provision comes into picture only when garnishee disowns his liability to pay the amount ordered to be deposited. In the instant case, the garnishee has said that till the end of 1997, the amount have already been paid to the judgment debtor in advance, and the amount from December 1997 onwards will be deposited into the

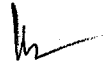
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court if the court so orders. It is only on this undertaking the order dt 20.11.1997 came to be passed which order has been disobeyed by the garnishees. As there is no dispute regarding the liability to deposit the rent, the question of holding any enquiry as contemplated under Order 21 Rule 46(c) does not arise.

9. It is the case where the widow is trying to recover the maintenance ordered by the court and even after 17 years, she is not able to recover even a single pie. The properties of the joint family are in the occupation of the tenants and when the court directed the tenants to deposit the rent in court to enable the lady to recover the amount, these garnishees are now contesting more than the original defendants. I am really unable to understand the conduct of the tenants. It is not in dispute that they are liable to pay the rent every month. It is not in dispute that they are liable to pay the rent from December 1997 onwards and they have made a solemn undertaking to the court that if the court orders, they will deposit. On 20.11.97 it has



directed to deposit the rent regularly, That order has not been challenged. It is only when they did not obey the said order, the court has issued the arrest warrant. Even at the time of hearing, this court wanted to know whether the petitioners are prepared to deposit the rent from December 1997 till today in court, so that they could avoid the embarrassment of being arrested. The tenor of submission made before me gives an impression that it is the proxy fight by the defendant with a sole intention to deprive the old lady who is now 64 years old of her legitimate claim for maintenance. Even after the CRP was admitted before this court, the petitioners have failed to deposit the rent as ordered by the court below. It is submitted that even after the order of arrest the amount has not been paid to the judgment debtor. Even the future rents are paid to the judgment debtor inspite of the order of this court. Therefore, it is the clear case of disobedience of the orders of the court and the only way in which it



can be enforced is by way of arrest of the garnishees till they are prepared to obey the orders passed earlier.

10. In this view, I do not find any merit in these three CRPs and hence, I pass the following order:

ORDER

CRPs are dismissed with costs of Rs.2,500/payable by each petitioner. The court below shall see that its order is implemented without any delay, if necessary with police help and the decree holder would have the benefits of the order during her life time.

Sd/- JUDGE