



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF MARCH, 2023

BEFORE

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

WRIT PETITION NO. 4525 OF 2023 (GM-CPC)

Between:

1. The Principal Secretary
Department of Health and Family Welfare,
Government of Karnataka,
Vikasa Soudha, Bengaluru 560001
2. The Commissioner
Department of Health and Family Welfare
Arogya Soudha, Magadi Road,
Bengaluru 560023

...Petitioners

(By Sri C.N.Mahadeshwaran, AGA)

And:

Tejasco Techsoft Private Limited
Represented by its Director,
Sri N.S.Prashanth,
Residing at No.240, 2nd Floor,
32nd Cross, 7th Block,
Jayanagar, Bengaluru 560082

...Respondent

(By Sri H.Sunilkumar, Advocate)

This Writ Petition is filed under Article 227 of The Constitution of India, praying to call for records in Commercial Execution 30/23 pending on the file of the 86th Additional City Civil Court, Commercial Court Complex, Bengaluru, set aside the impugned order dated 15.2.2023 passed by the Commercial Court in Comm. Ex. No. and etc.,30/2023 pending on the file of the 85th

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by C K LATHA
Location: HIGH
COURT OF
KARNATAKA



Additional City Civil Court, Commercial Court Complex, Bengaluru,
vide Annexure-A and etc.,

This Writ Petition coming on for **orders**, this day, the court
made the following:

ORDER

Heard Sri C.N.Mahadeshwarari, learned AGA, for the
petitioners and Sri H.Sunil Kumar for caveator/respondent.
Petitioners are the Principal Secretary and the
Commissioner, Department of Health and Family Welfare,
Government of Karnataka. They have challenged the
order dated 15.2.2023 passed in Com. Ex. 30/2023 on the
file of Commercial Court, Bengaluru, CCH 86.

2. It appears that the respondent sought to
execute the award passed in A.C.130/2022 and they made
an application under section 60 of the Code of Civil
Procedure seeking attachment of movables and
immovables found in the office of the petitioners. The
court below having found that the award has attained
finality and to avoid delay in payment of the award
amount, ordered for arrest of the petitioners under Order
XXI Rule 30 CPC.



3. The order impugned in the writ petition is patently illegal. Firstly, the respondent did not file an application for arrest of the judgment debtors, i.e., the petitioners. They made an application for attachment of movables and immovables. It is submitted by Sri Sunil Kumar that the court below considered oral application of the respondent and therefore ordered for arrest of the petitioners. He refers to Order XXI Rule 11 CPC.

4. With regard to submission of Sri Sunil Kumar, it is to be stated that even though the said provision provides for arrest of the judgment debtors on the oral application, the condition to be satisfied is that at the time of passing of the decree, the judgment debtor must be present within the precincts of the court or otherwise oral application cannot be considered for arrest. It is not the case of the respondent that the petitioners were present within the precincts of the court at the time of passing of the decree. It was the award of the arbitrator that was put into



execution, not the decree of the court and therefore Rule 11 of Order XXI CPC cannot be applied at all.

5. Although Order XXI Rule 30 CPC provides for detention of the judgment debtors, there is a procedure set down for arresting the judgment debtors. Order XXI Rules 37 to 40 CPC deal with it. The judgment debtors are the officers of the Government, and issuing warrant against them without issuing arrest notice cannot be sustained. In this view of the matter, the impugned order suffers from infirmity. Therefore writ petition is allowed. The impugned order dated 15.2.2023 passed in Com. Ex. 30/2023 on the file of Commercial Court, Bengaluru, CCH 86, is set aside.

**Sd/-
JUDGE**

CKL
List No.: 1 SI No.: 10