

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 3<sup>RD</sup> DAY OF AUGUST, 2021

PRESENT

THE HON'BLE Mr. JUSTICE ARAVIND KUMAR

AND

THE HON'BLE Mr. JUSTICE PRADEEP SINGH YERUR

**COMMERCIAL APPEAL No.71 OF 2021**

**C/W**

**COMMERCIAL APPEAL NO.84 OF 2021**

**IN COMMERCIAL APPEAL NO.71 OF 2021**

**BETWEEN:**

1. SRI LIGOURY D'MELLO  
S/O LATE SALVADOR D'MELLO  
AGED ABOUT 62 YEARS  
RESIDING AT P.O.BOX NO.  
57, P.C.328, TECHNOFIT  
TRADING LLC  
ALL RUMAIS, BARKHA  
SULTANATE OF OMAN
2. SMT.MARY MARGARET D'MELLO  
W/O LIGOURY D'MELLO  
AGED ABOUT 54 YEARS  
RESIDING AT P.O BOX  
NO.57, P.C.328  
TECHNOFIT TRADING LLC  
ALL RUMAIS, BARKHA  
SULTANATE OF OMAN

... APPELLANTS

(BY SRI MANMOHAN P.N., ADVOCATE )

**AND:**

1. EXCELSIOR UNITED HOSPITALITY  
PRIVATE LIMITED  
A COMPANY INCORPORATED  
UNDER COMPANIES ACT 2013  
REGISTERED OFFICE AT  
NO.349, 15<sup>TH</sup> A CROSS  
6<sup>TH</sup> MAIN, 6<sup>TH</sup> SECTOR  
HSR LAYOUT  
BENGALURU – 560 102  
  
PRESENTLY WORKING AT  
NO.348, 12<sup>TH</sup> MAIN ROAD  
4<sup>TH</sup> CROSS, HSR LAYOUT  
5<sup>TH</sup> SECTOR, BENGALURU – 560 0102  
REPRESENTED BY ITS DIRECTOR'S  
MRS.DIVYA GIRISH AND  
SHIVAPRAKASH GIRISH
2. SHIVA PRAKASH GIRISH  
S/O VIRUPAKSHAIAH SHIVA PRAKASH  
MAJOR  
NO.348, 12<sup>TH</sup> MAIN ROAD  
4<sup>TH</sup> CROSS, HSR LAYOUT  
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BENGALURU – 560 102
3. KUKUTLA MALLA REDDY  
S/O JANAKIRAM REDDY KUKUTLA  
MAJOR  
R/AT NO.101, 5<sup>TH</sup> CROSS  
FERNS CITY, OPP; TOTAL MALL,  
DADDANAKUNDI  
MARATHAHALLI COLONY  
BENGALURU – 560 037
4. VENKATA SURESH REDDY BIRUDAVOLU  
S/O VENKU REDDY BIRUDAVOLU  
MAJOR  
R/AT NO.269, KHB COLONY,

KORAMANGALA, 5TH BLOCK,  
KORAMANGALA, BENGALURU

- 5 . MAHESH MUNIYAPPA REDDY  
S/O MUNIYAPPA HEBBAGODI  
AGED MAJOR  
R/AT NO.53, 5<sup>TH</sup> A CROSS,  
21<sup>ST</sup> MAIN, MCHS COLONY,  
BTM 2<sup>ND</sup> STAGE  
BENGALURU – 560 076
- 6 . VALLERU SARITHA  
S/O VALLERU BALACHANRA NAIDU  
MAJOR  
NO.255, 2<sup>ND</sup> FLOOR,  
5<sup>TH</sup> MAIN, M.S. RAMAIAH CITY,  
NEAR CORPORATION BANK,  
J.P. NAGAR, 8TH PHASE  
BANNERGHATTA ROAD  
BENGALURU – 560 076
- 7 . VENUGOPALACHARY MUNAGANTI  
S/O VISWARUPACHARY MUNAGANTI  
MAJOR  
R/AT NO. 23 /1333, TEKKEMITTA,  
BESIDE OLD EXCISE OFFICE,  
TEKKEMITTA, NELLORE,  
DAGAMITTA, NELLORE,  
ANDHRA PRADESH – 524 003
- 8 . GORTHI VIDYA SAGAR  
S/O GORTHI SATYAMURTHY  
MAJOR  
R/AT OLD NO.78, NEW NO.5,  
NATARAJAN STREET,  
DHANALAKSHMI COLONY,  
VADAPALANI, CHENNAI,  
TAMIL NADU – 600 026
- 9 . MOONGLADE RESORTS AND HOTELS LLP  
A LIMITED LIABILITY PARTNERSHIP FIRM  
INCORPORATED UNDER LIMITED LIABILITY  
PARTNERSHIP ACT ,

REGISTERED OFFICE AT  
VILLA NO.809/3, 2<sup>ND</sup> STREET,  
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.... RESPONDENTS

(BY SRI M.K.VENKATEARAMANA, ADVOCATE FOR R-3 &  
R-5 , SRI M.S.VENUGOPAL, ADVOCATE FOR R-2, NOTICE TO  
R-6 TO R-8 D/W, R-1 SERVED AND UNREPRESENTED, R-4  
SERVED AND UNREPRESENTED, R-7 SERVED AND  
UNREPRESENTED R-9 SERVED AND UNREPRESENTED, R-10  
SERVED AND UNREPRESENTED & R-11 SERVED AND  
UNREPRESENTED )

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THIS APPEAL IS FILED UNDER ORDER VII RULE 1 AND 2  
R/W SECTION 26 OF THE CODE OF CIVIL PROCEDURE 1908  
R/W COMMERCIAL COURTS ACT 2015 PRAYING TO SET ASIDE  
THE ORDER DATED 06/04/2021 PASSED ON I.A.NO.1 IN  
COM.O.S.NO.352/2020 PASSED BY THE COURT OF LXXXIII  
ADDL.CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT)  
BENGALURU IN SO FAR AS REJECTING THE APPLICATION FOR  
ATTACHMENT BEFORE JUDGMENT IN RESPECT OF APPLICATION  
SCHEDULE 'A' PROPERTY OF THE 2<sup>ND</sup> DEFENDANT AND  
APPLICATION SCHEDULE 'C' PROPERTY OF THE 5<sup>TH</sup> DEFENDANT  
AND ALLOW I.A.NO.1 AS PRAYED FOR AND PASS SUCH OTHER  
AND FURTHER ORDERS AS DEEMED FIT IN THE FACTS AND  
CIRCUMSTANCES OF THE CASE AND ETC.,

**IN COMMERCIAL APPEAL NO.84 OF 2021****BETWEEN:**

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BENGALURU – 560 037

.... RESPONDENTS

\* \* \*

THIS APPEAL IS FILED UNDER SECTION 13 (IA) OF COMMERCIAL COURTS APPEAL R/W ORDER XLIII RULE 1 ( R ) OF THE CPC, PRAYING TO SET ASIDE THE ORDER DATED 06/04/2021 PASSED ON I.A.NO.2 IN COM.O.S.NO.352/2020 PASSED BY THE COURT OF LXXXIII ADDL.CITY CIVIL AND SESSIONS JUDGE (COMMERCIAL COURT) BENGALURU AND ALLOW I.A NO.2 AS PRAYED FOR AND PASS FOR AND PASS SUCH OTHER AND FURTHER ORDERS AS DEEMED FIT IN THE FACTS AND CIRCUMSTANCES OF THE CASE AND ETC.,

THESE APPEALS ARE COMING ON FOR ORDERS, THIS DAY, **ARAVIND KUMAR J.**, DELIVERED THE FOLLOWING:

### **JUDGMENT**

These two appeals are directed against the order dated 06.04.2021 passed in Commercial Suit No.352 of 2020, wherein interlocutory applications IA Nos.1 and 2 filed under order XXXVIII Rule 5 r/w 151 of CPC and under order XXXIX Rules 1 & 2 r/w 151 of CPC respectively, which came to be allowed in part / dismissed.

2. In IA No.1/2021 plaintiffs sought for an order for attachment against defendant No.2 in respect of schedule A & B properties and against defendant No.5 in respect of Schedule C property. Whereas in IA No.2/2021 an order of temporary injunction was sought by plaintiff to



restrain defendant No.2 from alienating or encumbering Schedule A and B Properties and to restrain defendant No.5 from alienating or encumbering Schedule C & D properties.

3. Insofar as IA No.1/2021 is concerned, trial court by its order dated 06.04.2021 which is under challenge has allowed the same in part and directed the defendant to furnish security for Rs.7,69,36,876/- within one month from the date of order and on failure of the defendant No.2 to furnish the security within one month, Schedule B property has been ordered to be attached. Insofar as prayer for attachment of Schedule A property is concerned, same has been rejected.

4. Plaintiff being aggrieved by non-granting of an order of attachment in respect of Schedule A property, is before this Court in ComAP No.71/2021. Whereas ComAP No. 84/2021 has been preferred by the plaintiff being aggrieved by the order of trial court rejecting the application for temporary injunction sought for against

defendant Nos.2 & 5 in respect of Schedule A and D properties.

5. Learned counsel appearing for defendant No.2 before the trial court, namely, Sri M.S. Venugopal, submits that defendant No.2 and his wife, who own Schedule B property would file an affidavit undertaking that they would not sell or encumber Schedule B property during the pendency of the suit. He would also hasten to add that in respect of Schedule A property defendant No.2 also undertakes that he will not sell or encumber the same and an affidavit to the said effect would be filed within ten days from today. He would also submit that in the light of the said undertaking given the order of attachment be modified.

6. Sri Venkataramana.M.K., learned counsel appearing on behalf of respondent Nos.3 to 5 submits that defendant No.5 (respondent No.5) would undertake that insofar as Schedule C property is concerned, he owns only 50% right, title and interest and to the said extent of 50%

of right in Schedule C property, he would undertake not to alienate or encumber the said property during the pendency of the suit. He would submit that Schedule D property is mortgaged to Canara Bank. He would further state that Schedule D property is exclusively owned by defendant No.5 (respondent No.5) and said property would not be sold or encumbered during the pendency of the suit and this undertaking is already given before the trial court. He would also submit that if any further encumbrance would be created, defendant No.5 would make necessary application before the trial court seeking such permission.

7. We make it expressly clear that in the event such application is filed, trial court would be at liberty to consider the same after hearing both the parties and pass orders in accordance with law. However, we make it clear that we are not expressing any opinion in that regard and contentions of both the parties are kept open.

8. Learned counsel appearing for defendant No.5 submits that an affidavit to the said effect shall be filed

within 10 days from today. His submission is placed on record.

9. In the light of the aforesaid facts and undertakings given by learned counsel appearing for respondent Nos.2 to 5, continuation of these appeals would not be warranted. We further clarify that attachment order issued is modified to the extent of undertaking given by the defendant No.2 insofar as Schedule B property and same shall stand modified.

10. Accordingly, these two appeals stand disposed of.

We make it further clear that in the event of undertaking by way of an affidavit is not filed within ten (10) days from today, as undertaken before this Court, appellant will be at liberty to seek revival of these two appeals.

Trial court shall make all endeavor for expeditious disposal of the suit, subject to both parties co-operating with the trial court.

All pending applications stands consigned to records.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

VK