



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MARCH, 2023

PRESENT

THE HON'BLE MR JUSTICE G.NARENDAR

AND

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

COMMERCIAL APPEAL NO. 27 OF 2021

BETWEEN:

SMT. S HEMALATHA
W/O SHRI V PRAKASH
AGED 66 YEARS
D2 CHARTERED SANNIDHI APARTMENT
No.17, SANNIDHI ROAD
BASAVANAGUDI
BENGALURU - 560 004.

...APPELLANT

(BY SMT. G.K.BHAVANA, ADVOCATE)

AND:



1. M/s. EMBASSY CLASSIC PRIVATE LIMITED.,
A PRIVATE LIMITED COMPANY
REGISTERED OFFICE AT NO.101/102
1ST FLOOR, EMBASSY CHAMBERS
VITTAL MALLYA ROAD
BENGALURU - 560 001
REP. BY ITS DIRECTOR
MR. JAIKISHEN VIRWANI.
2. M/S. EMBASSY HEIGHTS UNIT
OWNERS ASSOCIATION
MAGRATH ROAD
CORPORATION DIVISION NO.61



BENGALURU - 560 025
REP. BY ITS GENERAL SECRETARY.

...RESPONDENTS

(BY SRI A RAVISHANKAR, ADVOCATE FOR C/R -1
R2-SERVED AND UNREPRESENTED)

THIS COMAP IS FILED UNDER SECTION 13(1A) OF THE
COMMERCIAL COURTS ACT, 2015 R/W ORDER 41 RULE 1 AND
SECTION 96 OF CPC, PRAYING TO CALL FOR ENTIRE RECORDS N
COM.O.S.No.8326/2015 ON THE FILE FO LXXXIII ADDITIONAL
CITY CIVL AND SESSIONS JUDGE, BENGALURU CITY (CCH No.84)
AND ETC.,

THIS APPEAL, COMING ON FOR HEARING THIS DAY,
SHIVASHANKAR AMARANNAVAR J, DELIVERED THE
FOLLOWING:

JUDGMENT

The Defendant No. 1 has filed this appeal seeking
setting aside the judgment and decree dated 21.10.2020
passed by the LXXXIII Additional City Civil and Sessions
Judge, Bengaluru city (CCH 84) in Com.O.S. No. 8326/2015
and dismiss the suit.

2. Said suit filed by respondent No. 1 – company
against appellant – respondent No. 2 came to be decreed
with cost directing the appellant - defendant No. 1 to pay a
sum of Rs.11,03,998/- with interest at the rate of 12% p.a.



from the date of suit till realization and the claim of the plaintiff – respondent No. 1 to recover a sum of Rs.5,74,200/- with interest came to be rejected by the impugned judgment and decree dated 21.10.2020.

3. A compromise petition came to be filed under Order XXIII Rule 3 read with Sections 89 and 151 of CPC and it is signed by the appellant and Director of respondent No. 1 – company and their respective counsel. The terms of the compromise petition are as under:

"The 1st Respondent herein had instituted a suit against the Appellant herein in Com.O.S.8326/2015 before the Addl. City Civil and Sessions Judge, Bangalore City (CCH- 85) for recovery of Rs.11,03,998/- and a sum of Rs.5,74,200/- with interest at 24% per annum, towards maintenance and other charges. Upon contest, the said suit was partly decreed by the Trial Court on 21.10.2020, directing the Appellant herein to pay a sum of Rs.11,03,998/- with interest at 12% per annum. The Defendant/Appellant herein has preferred the above Commercial Appeal, challenging the said judgment and decree passed by Com.O.S.8326/2015.



2. Pursuant to the orders of this Hon'ble Court dated 15.3.2021 and 12.4.2021, the Appellant has deposited a sum of Rs.19,09,992/- (Rupees Nineteen Lakhs Nine Thousand Nine Hundred and Ninety Two only) before this Hon'ble Court as follows:

- i) A sum of Rs.9,54,996/- by way of Demand Draft bearing No.360129 dated 15.3.2021.*
- ii) A sum of Rs.9,54,996/- by way of Demand Draft bearing No.693709 dated 12.4.2021.*

3. As per the advice of this Hon'ble Court, well-wishers and friends, the Parties have resolved their dispute under the following terms and conditions:

i) That the Appellant has agreed to settle the dispute with the 1st Respondent by paying a sum of Rs.21,81,726/- towards closure of the above Appeal. The 1st Respondent has agreed to receive the said sum as full and final settlement of their claim in the above case.

ii) The Appellant has no objection for the 1st Respondent to receive Rs.19,09,992/- in deposit before this Hon'ble Court, as stated herein above.

iii) The Appellant has issued a cheque bearing No.000182 for a sum of Rs.2,71,734/- (Rupees Two Lakhs Seventy-One Thousand Seven Hundred and Thirty-Four Only)



dated 28/02/2023 drawn on Kotak Mahindra Bank, High Court Branch, Bangalore, in favour of the 1st Respondent/M/s. Embassy Classic Pvt. Ltd. towards full and final settlement of the Com.O.S.8326/2015. decretal amount in The 1st Respondent acknowledges receipt of the cheque bearing No.000182 dated 28/02/2023 drawn on Kotak Mahindra Bank, High Court Branch, Bangalore, subject to realization of the same.

iv) The Parties mutually agree that subject to realization of the cheque referred to above, the liability of the Appellant towards the suit claim in Com.O.S.8326/2015 stands discharged.

v) The Parties mutually agree that in the event, for whatever reason, the cheque is dishonoured, upon presentation by the 1st Respondent, the Appellant agrees to pay interest at 18% per annum from the date of the Original Suit ie., from 30th September 2015 till realization on the suit claim. The 1st Respondent is at liberty to attach the rental income & Deposits derived by the Appellant from her unit in Embassy Heights & Adjust the said sum towards the outstanding dues on prorate basis and take such other necessary remedial action for recovery of their dues and the Appellant has no objection of whatever nature.



vi) The Court Fee paid in the above case, as admissible may be refunded to the Appellant, for which the 1st Respondent has no objection.

vii) The Parties to this compromise have agreed to enter into this compromise out of their free will, without any force or coercion, and request that in terms of the above Settlement, the Hon'ble Court may draw up the Decree, accordingly.

WHEREFORE, the parties to this Compromise Petition pray that this Hon'ble Court be pleased to accept the Compromise Petition, in the ends of equity and justice."

4. Terms of the compromise are lawful. The parties present before the Court admit the terms of the compromise and submit that they have voluntarily entered into the compromise.

5. The appeal is disposed of in terms of the compromise petition. Draw the decree in terms of the compromise petition. The appellant – defendant No. 1 is entitled for refund of admissible Court fee paid on the appeal. In terms of the compromise, respondent No. 1 is



entitled to receive the amount of Rs.19,09,992/- which is deposited before this Court by the appellant.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

LRS
List No.: 1 Sl No.: 23