

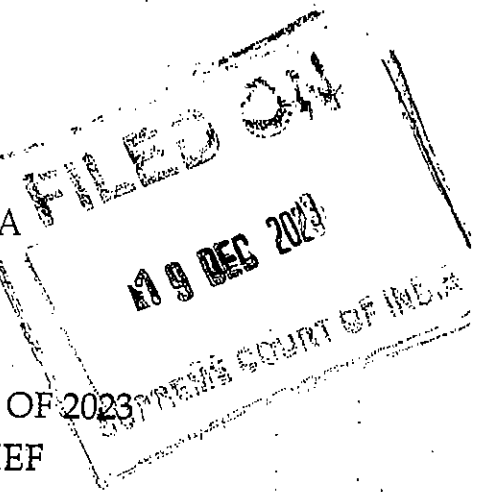
113/22
IN THE SUPREME COURT OF INDIA

{S.C.R. ORDER XXI RULE 3 (1) (A)}

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF



(Against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) APPEALED FROM)

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others

... Petitioners

VERSUS

Shri. B. V. Narayan and Others

... Respondents

WITH

I.A. NO. OF 2023

APPLICATION FOR EXEMPTION FROM FILING CERTIFIED
COPY OF THE IMPUGNED ORDER DATED 27.11.2023

PAPERBOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: AP&I CHAMBERS

DIARY NO-5313 OF 2023

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the petition in the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

Avantika Manohar
Advocate-on-Record

Date:

Contact No.

CMS D-85 CHIMBERLAIN
CG 1552

9999570591

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. OF 2023

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 27.11.2023 passed by the
Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition
No.630 of 2023 (IO) APPEALED FROM)

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others

... Petitioners

VERSUS

Shri. B. V. Narayan and Others

... Respondents

OFFICE REPORT ON LIMITATION

1. The Petition is /are within time. ✓
2. The Petition is barred by time and there is delay of days in filing
the same against impugned order dated 27.11.2023 and petition for
condonation of days delay has been filed.
3. There is delay of days in refilling the Petition and petition
For condonation of delay in refilling has been filed.

BRANCH OFFICER

NEW DELHI

DATED: 19.12.2023

A1

PROFORMA FOR FIRST LISTING

SECTION -II-C

The case pertains to (Please tick/check the correct box):

<input type="checkbox"/>	Central Act: (Title) _____
<input type="checkbox"/>	Section: _____
<input type="checkbox"/>	Central Rule: (Title) _____
<input type="checkbox"/>	Rule No(s): <u>N/A</u>
<input type="checkbox"/>	State Act: (Title) _____ <u>N/A</u>
<input type="checkbox"/>	Section: _____ <u>N/A</u>
<input type="checkbox"/>	State Rule: (Title) _____ <u>N/A</u>
<input type="checkbox"/>	Rule No(s): <u>N/A</u>
<input type="checkbox"/>	Impugned Interim Order: (Date) <u>N/A</u>
<input type="checkbox"/>	Impugned Final Order/Decree: (Date) <u>27.11.2023</u>
<input type="checkbox"/>	High Court: (Name) <u>High Court of Karnataka at Bengaluru</u>
<input type="checkbox"/>	Names of Judges: <u>Hon'ble Mr. Justice R Nataraj</u>
<input type="checkbox"/>	Tribunal/ Authority: (Name) <u>N/A</u>

- Nature of matter: ☒ Civil ☐ Criminal
- Petitioner/ Appellant No.1: M/s Sreenivas Enterprises and Others
 - e-mail ID: N/A
 - Mobile Phone Number: N/A
- Respondent No.1: Sri. B.V. Narayan and Others
 - e-mail ID: N/A
 - Mobile Phone Number: N/A

42

4. (a) Main category classification: .18
(b) Sub classification: 1807
5. Not to be listed before: N/A
6. (a) Similar disposed of matter with citation,
if any, & case details: No similar disposed off matter
(b) Similar pending matter with case details: SIMILAR MATTER
PENDING SLP (C) Diary No: 52581/2023
7. **Criminal Matter:** N/A
(a) Whether accused/convict has surrendered: ☐ Yes ☐ No
(b) FIR No. N/A Date: N/A
(c) Police Station: N/A
(d) Sentence Awarded: N/A
(e) period of sentence undergone including period of Detention/Custody
undergone N/A
8. **Land Acquisition Matter:**
(a) Date of Section 4 notification: N/A
(b) Date of Section 6 notification: N/A
(c) Date of Section 17 notification: N/A
9. **Tax Matter:** State the tax effect: N/A
10. **Special Category (first Petitioner/ Appellant Only):** N/A
☐ Senior Citizen > 65 ☐ SC/S ☐ Woman/C ☐ Disable ☐ Legal
years T hild d
Aid ☐ In custody
case
11. Vehicle Number (in case of Motor Accident Claim Matters): N/A

Date: 19.12.2023

Filed by
Awantika Manohar
(M/S AP&J CHAMBERS)
AOR FOR PETITIONERS

SYNOPSIS

B

That the instant Special Leave Petition is filed against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) whereby the Hon'ble High Court had dismissed the civil revision petition. It is submitted that the Impugned Order is contrary to both the statutory provisions and catena of judicial precedents as outlined below:

- A. Under section 9 of the Karnataka Small Cause Courts Act, 1964 ("the SCC Act") the exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance.
- B. The full bench of the Hon'ble High Court in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532 has held that the exclusive jurisdiction conferred under Section 9 of the SCC Act, would be determined only on the basis of rent payable for the year next before the presentation of the suit and nothing else.
- C. The judgment in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532 was followed by the Coordinate benches in *Sandeep Chowhan v. Krishnaraj Bhat*, 2015 SCC OnLine Kar 8590 and *M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013* and further held that "for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance". Thus, quantum of the damages claimed by the Respondent/Plaintiff in the nature of mesne profit are irrelevant for the determination of the pecuniary jurisdiction of the Ld. Small Causes Court.

C

D.No action of the party can confer jurisdiction to the Civil Court on the subject matter, which is excluded by statute, as held by this Hon'ble Court in (2013) 10 SCC 136, 1954 SCC OnLine SC 11 and (2005) 7 SCC 791.

The civil revision petition before the Hon'ble High Court was filed against the order of the Court of XXII Additional City Civil and Sessions Judge, Bengaluru ("*Ld. Civil Court*") dismissing the application, under Order 7 rule 10 of CPC, of the Petitioner for return of plaint in the suit bearing no. 3842/2018, filed by the Respondent seeking ejectment of the Petitioner from the suit scheduled property, as the jurisdiction of the Ld. Civil Court is specifically barred under section 9 r/w section 8 of the SCC Act.

The Hon'ble High Court had dismissed the appeal and partition suit respectively mainly on the following grounds;

- i. That value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would oust the jurisdiction of the Court of Small Causes
- ii. The Petitioners/Defendant have not contested the jurisdiction at the earlier stage of proceedings.

It is respectfully submitted that the Hon'ble High Court and the Ld. Civil Court are in error and Impugned Order also liable to be set aside because:

D

A. THE EXCLUSIVE JURISDICTION OF THE SMALL CAUSE COURT AND THE QUANTUM OF THE DAMAGES CLAIMED ARE IRRELEVANT TO THE DETERMINATION OF THE PECUNIARY JURISDICTION OF THE SMALL CAUSES COURT

- i. It is submitted that the High Court failed to appreciate under Section 9 of the SCC Act the exclusive jurisdiction to entertain a suit for ejection of the tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance and where the value of the suit should not exceed two lakh rupees.

Section 8. Cognizance of suits by Courts of Small Causes.- (1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of civil nature of which the value does not exceed "two lakh rupees" in Bangalore City, "one lakh rupees" in other places, shall be cognizable by a court of small causes.

Section 9. Exclusive jurisdiction of Courts of Small Causes. - Save as expressly provided by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction, within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable

- ii. It is submitted that the Hon'ble High Court had erred in holding the value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would oust the jurisdiction of the Court of Small Causes. The said finding of the Single Judge Bench of the Hon'ble High Court is directly contrary to the law laid down by the full bench of the Hon'ble

E

High Court in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532. In the said judgement it is settled by the Hon'ble High Court that to determine the pecuniary jurisdiction of the Court of the Small Cause Court what is relevant is the 'rent' payable for the year before the date of presentation of the plaint, for in terms of Sec. 41(2) of Karnataka Court Fees & Suits Valuation Act 1958 ("KCFSV Act") and nothing else.

- iii. It is pertinent to mention that the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year next before the date of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- (i.e. INR 1,375 x 12 months). Thus, admittedly the suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance.
- iv. It is also submitted that the Hon'ble High Court failed to appreciate that mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon'ble Court in *Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd.*, 2023 SCC OnLine SC 1614, has recently held that a suit for possession and a suit for mesne profit constitute distinct causes of action. Thus, the mere request for mesne profit cannot undermine the exclusive jurisdiction of the Ld. Small Cause Court over any cause of action.
- v. It is also submitted that the Impugned Order is not only contrary to the aforestated full bench judgment but is also divergent from the judgement of the coordinate bench of the Hon'ble High Court, in

F

Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590

wherein the Court had held as follows -

9. As rightly contended by the Learned Counsel for the revision petitioners, future mesne profits will not determine the cause of action. The cause of action on the date of institution of the suit will have no relevance to the mesne profits which the defendant – Tenant would be liable to pay for occupation of the premises during the pendency of the suit. It would not be possible for the plaintiff to plead cause of action or to value his suit based on the future mesne profits for the purpose of pecuniary jurisdiction or for that matter for the purpose of payment of Court fee. Therefore, for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance.

A similar view was taken in the case of *M/s Shravana Minerals v. R. Jayalakshmi* W.P. No. 65/2013, which held as follows:-

It is clear, for the purpose of finding out the pecuniary jurisdiction of the court what is relevant is rent payable for one year prior to the presentation of the plaint and nothing else. The rent payable in the present case is Rs. 1,000/- per month which comes Rs. 12,000/- per annum. Therefore, the small causes court has jurisdiction to try the case. The impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed.

B. JURISDICTION TO CIVIL COURT CANNOT BE CONFERRED IF SUBJECT MATTER JURISDICTION IS OUSTED BY LAW

- vi. It is submitted that the Hon'ble High Court has failed to appreciate that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties. Consequently, any decision of the court having no jurisdiction would amount to a nullity, as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings and the doctrine of waiver also does not apply.

C

The aforesaid principle is reiterated by this Hon'ble Court in a plethora of judgments, e.g. *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 and *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791.

- vii. It is submitted that this Hon'ble Court has in its judgment *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 has held the following:

9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply... "

- viii. It is submitted that the mere fact that the Petitioner, had prayed for clubbing of suit filed for renewal of the lease with the Respondent's suit seek ejectment, cannot confer jurisdiction upon the Ld. Civil Court over the subject matter, which is barred under the statute, i.e. the Small Cause Court Act. It is also apposite to mention that the division bench of the Hon'ble High Court has also held the aforesaid in *Shivamurthi Mallayya Swami v. Mahadev Umarane*, 1989 SCC OnLine Kar 2, wherein it was held that:

31. It is, therefore, clear that the fact that the defendant did not raise any objection to the jurisdiction of the Court of the Munsiff would not ensure for the benefit of the plaintiff to contend that the decree is not a nullity.

H

Consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings. It is a well established rule of law that a nullity remains a nullity and can be so declared at any stage.

34. On facts, it is clear that when the suit was tried and disposed of, there was no jurisdiction in the Court of the Munsiff to try it. Having regard to the imperative command in Section 9 of the Small Cause Courts Act, the decree, in our opinion, has to be held as a nullity.

- ix. Hence, the impugned judgment passed by the Hon'ble High Court requires to be interfered with as it is contrary to established precedents on the very same issue as has been confirmed by a full bench, a division bench and several co-ordinate benches of the Karnataka High Court. If the impugned judgment is not set-aside it would lead to chaos following the divergent interpretation of the jurisdiction of Small Cause Courts under section 9 of the SCC Act, 1964. For the aforesaid reasons and grounds the impugned judgment is liable to be set aside.

I

LIST OF DATES & EVENTS

DATES	EVENTS
18.07.1878	The Respondent are members of Basetty Family, which have effected partition, of piece of land measuring 46,515 sq. feet, situated at H. Siddaiah Road, Bengaluru, was also partitioned among the members of the family.
January 1967	<p>On the basis of the partition deed dated 18.07.1878, the said land measuring 46,515 sq feet was divided among the following:</p> <ol style="list-style-type: none">1. Land measuring 11,430 sq. ft. was allotted to Mr. B R Venkataramana Setty (<i>The Respondents are the legal heirs of Mr. B R Venkataramana Setty</i>).2. Land measuring 23,738 sq ft. was allotted to the M/s Basetty Trust.3. Land measuring 11,346 sq. ft. was allotted to Mr. B. Krishna Setty.
29.01.1970	The Petitioner entered into three separate registered lease deeds with s M/s Basetty Trust., Mr. B R Venkataramana Setty and Mr. B. Krishna Setty in respect of the land for

J

	<p>42+3 years with a condition of renewal for a further period of 45 years on certain conditions.</p> <p>Consequent to taking the land on lease, the Petitioner constructed a cinema theatre, under the name and style of "<i>Urvashi Theatre</i>" on the said land and along with the adjoining land.</p>
30.05.2016	<p>The Petitioners herein by invoking clause contained in the lease deed, dated 29.01.1970, has filed a suit before the City Civil Court in O.S. 3861/2016, seeking extension of lease deed for further period of 45 years.</p>
21.03.2018	<p>Notice under Section 106 of the Transfer of Property Act by Respondent to vacate and handover the vacant possession of Urvashi Theatre on expiry of lease period.</p>
30.05.2018	<p>The Respondents (<i>i.e. the Legal Representative of Venkataramana Setty</i>) herein have filed a suit against the Petitioners before the Ld. City Civil Judge, Bengaluru (CCH-7) in O.S.No.3842/2018 for possession and also for damages at the rate of Rs.12,50,000/- per month till the date of handing over the possession of the Suit Schedule</p>

K

	<p>Property. It is pertinent to mention that the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year next before the date of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- (i.e. INR 1,375 x 12 months). Thus, admittedly the suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance. A True copy of plaint in OS No.3842 of 2018 along filed by the Respondent Nos.1 to 5 dated 30.05.2018 before the Ld. City Civil Judge, Bengaluru (CCH-7) is annexed herewith and marked as ANNEXURE-P/1 (Pgs. 45 To 61)</p>
27.10.2018	<p>The Petitioner contested the suit by filing a Written Statement. A true copy of written statement filed by the Petitioners in O.S. No.3842/2018 before the Ld. City Civil Judge, Bengaluru (CCH-7) dated 27.10.2018 is annexed herewith and marked as ANNEXURE-P/2 (Pgs. 62 To 77)</p>

2

21.09.2023	<p>The Petitioners herein took the note of lack of jurisdiction of the Ld. Civil Court in view of the Section 8 r/w 9 of the SCC Act. Accordingly, the Petitioners on 21.09.2023 have filed an application under Order VII Rule 10 of CPC with a request to return the plaint for want of jurisdiction on the ground that the rent payable for one year before the presentation of the plaint was only a sum of Rs.16,500/- which is less than Rs.2,00,000/- in view of Section 9 r/w Section 8(2) of SCC Act and Schedule (4) of the SCC Act, the Small Causes Court has the exclusive jurisdiction over the relief and suit filed by the Respondent. A true copy of the application under Order VII Rule 10 filed by the Petitioners/Defendants before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru in OS No.3842/2018 is annexed herewith and marked as ANNEXURE-P/3 (Pgs. 78 To 80)</p>
22.09.2023	<p>However, the said application filed by the Petitioner was opposed by the Respondents by filing the objections to the application. A true copy of the objections filed by the</p>

M

	Respondents to the application of the Petitioners/Defendants before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru in OS No.3842/2018 dated 22.09.2023 is annexed herewith and marked as ANNEXURE-P/4 (Pgs. 81 To 86)
25.09.2023	That the Ld. City Civil Court, vide its order dated 25.09.2023 without properly appreciating the facts and law has dismissed the application filed for return of plaint, filed by the Petitioners herein. A true copy of the order dated 25.09.2023 passed by the Court of the XXII Additional City Civil and Sessions Judge, Bangalore City in O.S. No.3842 of 2018 is annexed herewith and marked as ANNEXURE-P/5 (Pgs. 87 To 105)
26.09.2023	That being aggrieved by the order dated 25.09.2023 passed by the Ld. City Civil Judge, the Petitioner herein preferred Civil Revision Petition No.630 of 2023 (IO) before the Hon'ble High Court of Karnataka at Bengaluru. A true copy of the Civil Revision Petition No.630 of 2023 (IO) dated 26.09.2023 filed by the Petitioners before the Hon'ble

N

	High Court of Karnataka at Bengaluru is annexed herewith and marked as ANNEXURE-P/6 (Pgs. 106 To 119).
27.11.2023	That the Hon'ble High Court of Karnataka at Bengaluru vide its final judgment and order dated 27.11.2023 passed in Civil Revision Petition No.630 of 2023 (IO) dismissed the petition of the Petitioners in complete disregard of the contentions raised by the Petitioners. (IMPUGNED ORDER)
19.12.2023	Hence the instant Special Leave Petition.



- 1 -

NC: 2023:KHC:42739
CRP No. 611 of 2023
C/W CRP NO. 630 of 2023,
CRP NO. 633 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF NOVEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

CIVIL REVISION PETITION NO. 611 OF 2023 (IO)

C/W

CIVIL REVISION PETITION NO. 630 OF 2023 (IO),

CIVIL REVISION PETITION NO. 633 OF 2023 (IO)

IN CRP No.611/2023:

BETWEEN:

1. M/S SREENIVAS ENTERPRISES
REPRESENTED BY THE MANAGING PARTNERS:
SRI.K.R RAVISHANKAR AND
SMT. ANITHA RAVISHANKAR,
VITTOBA TEMPLE STREET,
DODDABALLAPURA,
DODDABALLAPURA TALUK,
BENGALURU DISTRICT - 561203..
2. SRI. K.R. RAVISHANKAR
S/O K.C. RUDRE GOWDA,
AGED ABOUT 64 YEARS,
MANAGING PARTNER,
M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO. K-40, H. SIDDAIAH ROAD,
BENGALURU - 560027.
3. SMT. ANITHA RAVISHANKAR
W/O K.R. RAVISHANKAR,
AGED ABOUT 60 YEARS,
M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO.K-40, H. SIDDAIAH ROAD,
BENGALURU - 560027.

(BY SRI. T. SESHAGIRI RAO, ADVOCATE)

...PETITIONERS

Digitally
signed by
SUMA
Local
HIGHER
COURT OF
KARNATAKA



NC: 2023:KHC:42739
CRP No. 611 of 2023
C/W CRP NO. 630 of 2023,
CRP NO. 633 of 2023

AND:

1. M/S BASETTY TRUST
REGISTERED OFFICE AT NO.15,
13TH MAIN, JAGRUTHI COLONY,
PUTTENAHALLI, J.P.NAGAR,
7TH PHASE,
BENGALURU - 560078.

REPRESENTED BY:

2. THE PRESIDENT
SRI. B.N.RAM MOHAN,
S/O LATE B.K. NARAYAN,
AGED ABOUT 68 YEARS,
RESIDING AT NO. 15, 13TH MAIN,
JAGRUTHI COLONY, PUTTENAHALLI,
J.P.NAGAR VII PHASE,
BENGALURU - 560078.
3. THE SECRETARY
SRI. B.V. BADRINATH,
S/O LATE B.R. VENKATESH,
AGED ABOUT 62 YEARS,
RESIDING AT NO. 512,
ASHWATHAKATTE ROAD,
V.V.PURAM,
BENGALURU - 560011.

TRUSTEES:

4. SRI. B.V. CHANDRASEKAR
S/O LATE B.R. VENKATARAMANA SETTY,
AGED ABOUT 78 YEARS,
RESIDING AT NO. 100/24,
10TH D MAIN ROAD, V.V.PURAM,
BENGALURU - 560011.
5. SRI.S.K. KISHORE
S/O LATE B.S. KRISHNAMURTHY,
AGED ABOUT 59 YEARS,
RESIDING AT NO.33, 2ND FLOOR,
OPPOSTIE GOVERNMENT,
MATERNITY HOSPITAL,
SAJJAN RAO ROAD, V.V.PURAM,
BENGALURU - 560 004.



NC: 2023:KHC:42739
CRP No. 611 of 2023
C/W CRP NO. 630 of 2023,
CRP NO. 633 of 2023

6. SMT. B.N. RAJESHWARI
W/O V.B. KRISHNAIAH CHETTY,
D/O LATE B.R. NAGARAJAN,
AGED ABOUT 64 YEARS,
RESIDING AT NO. 593,
21ST MAIN ROAD, 4TH T BLOCK,
JAYANAGAR,
BENGALURU - 560041.

...RESPONDENTS

(BY SRI. P.P. HEGDE, SENIOR COUNSEL FOR
SRI. VISWANATHA SETTY V, ADVOCATE
FOR R1, R2, R3, R5 AND R6)

THIS CRP IS FILED UNDER SECTION 115 OF CPC, AGAINST
ORDER DATED 25.09.2023 ON IA NO.45 IN O.S.NO.3840/2018 ON
THE FILE OF THE XXII ADDITIONAL CITY CIVIL JUDGE AND
SESSIONS JUDGE, (CCH-7), BENGALURU REJECTING THE IA NO.45
FILED UNDER ORDER 7 RULE 10 OF CPC TO RETURN THE PLAINT
FOR WANT FOR JURISDICTION.

IN CRP NO.630/2023

BETWEEN:

1. M/S SREENIVAS ENTERPRISES
REPRESENTED BY
THE MANAGING PARTNERS:
SRI.K.R RAVISHANKAR AND
SMT. ANITHA RAVISHANKAR,
VITTOBA TEMPLE STREET,
DODDABALLAPURA,
DODDABALLAPURA TALUK,
BENGALURU DISTRICT - 561203.
2. SRI. K.R. RAVISHANKAR
S/O K.C. RUDRE GOWDA,
AGED ABOUT 64 YEARS,
MANAGING PARTNER,
M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO. K-40, H. SIDDAIAH ROAD,
BENGALURU - 560027.
3. SMT. ANITHA RAVISHANKAR
W/O K.R. RAVISHANKAR,
AGED ABOUT 60 YEARS,



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C/W CRP NO. 630 of 2023,
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M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO.K-40, H. SIDDIAH ROAD,
BENGALURU - 560027.

...PETITIONERS

(BY SRI. T SESHAGIRI RAO AND SRI. SUNIL S. RAO, ADVOCATES)

AND:

1. SHRI.B.V.NARAYAN
S/O LATE.B.V.VENKATARAMANA SETTY
AGED ABOUT 86 YEARS
R/AT NO.100/24, 10TH 'D' MAIN ROAD
1ST BLOCK, JAYANAGAR
BENGALURU - 560 011.
2. SRI.B.V. CHANDRASEKAR.
S/O LATE B.R. VENKATARAMANA SETTY,
AGED ABOUT 78 YEARS,
RESIDING AT NO. 100/24,
10TH D MAIN ROAD, V.V.PURAM,
BENGALURU - 560011.

SINCE DEAD BY LR'S

- 2(a) SMT. JALAJA SHEKAR
W/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 69 YEARS
- 2(b) SRI. HEMANTH CHANDRASHEKAR
S/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 46 YEARS
- 2(c) SRI. ANUP BANGALORE CHANDRASHEKAR
S/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 43 YEARS

ALL ARE R/AT. NO.100/24
10TH 'D' MAIN ROAD
1ST BLOCK, JAYANAGAR
BANGALORE 560 011.

...RESPONDENTS

(BY SRI. P.P. HEDGE, SENIOR COUNSEL FOR SRI. VISHWANATH
SETTY V, ADVOCATE FOR C/R1 AND R2(a) TO R2(c))



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THIS CRP IS FILED UNDER SECTION 115 OF CPC, AGAINST THE ORDER DATED 25.09.2023 PASSED ON I.A.NO.34 IN O.S.NO.3842/2018 ON FILE OF XXII ADDITIONAL CITY CIVIL JUDGE AND SESSIONS JUDGE, (CCH-7), BANGALORE REJECTING THE IA NO.34 FOR RETURN OF PLAINT FOR WANT OF JURISDICTION.

IN CRP NO.633/2023:

BETWEEN:

1. M/S SREENIVAS ENTERPRISES'
REPRESENTED BY THE MANAGING PARTNERS:
SRI.K.R RAVISHANKAR AND
SMT. ANITHA RAVISHANKAR,
VITTOBA TEMPLE STREET,
DODDABALLAPURA,
DODDABALLAPURA TALUK,
BENGALURU DISTRICT - 561203.
2. SRI. K.R. RAVISHANKAR
S/O K.C. RUDRE GOWDA,
AGED ABOUT 64 YEARS,
MANAGING PARTNER,
M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO. K-40, H. SIDDAIAH ROAD,
BENGALURU - 560027.
3. SMT. ANITHA RAVISHANKAR
W/O K.R. RAVISHANKAR,
AGED ABOUT 60 YEARS,
M/S SREENIVASA ENTERPRISES,
C/O URVASHI THEATRE,
NO.K-40, H. SIDDAIAH ROAD,
BENGALURU - 560027.

...PETITIONERS

(BY SRI. T. SESHAGIRI RAO, ADVOCATE)

AND:

1. SHRI. B K RAJENDRA PRASAD
S/O LATE B. KRISHNA SHETTY
AGED ABOUT 70 YEARS
R/AT NO. 31, 11TH 'A' CROSS,
1ST FLOOR, SWIMMING POOL EXTN,
SUDHINDRA NAGAR, MALLESWARAM,
BENGALURU - 560 003.



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2. SRI B.N. RAMA MOHAN,
S/O LATE B K NARAYAN,
AGED ABOUT 68 YEARS
RESIDING AT NO. 15, 13TH MAIN,
JAGRUTHI COLONY, PUTTENAHALLI,
J.P. NAGAR VII PHASE,
BENGALURU - 560 078.
3. SRI. B.G.SHANKAR,
S/O LATE B.K.GOPAL,
AGED ABOUT 60 YEARS
RESIDING AT NO. 2069,
EAST END "B" MAIN, 39TH CROSS,
JAYANAGAR IX BLOCK,
BENGALURU - 560 069.
4. SRI. B.M.SRINATH,
S/O LATE B.K.MANJUNATH,
AGED ABOUT 63 YEARS
RESIDING AT NO. 128/7,
7TH MAIN ROAD, LAKKSANDRA EXTN.,
WILSON GARDEN,
BENGALURU - 560 030.
5. SRI B.G. MAHESH
S/O LATE B.K. GOVINDARAJ,
AGED ABOUT 52 YEARS,
RESIDING AT NO. 69,
EAST PARK ROAD,
14TH CROSS, MALLESWARAM,
BENGALURU - 560 003.

...RESPONDENTS

(BY SRI. P.P. HEGDE, SENIOR COUNSEL FOR
SRI. V.VISHWANATH SETTY, ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC, AGAINST
THE ORDER DATED 25.09.2023 PASSED ON I.A.NO.34 IN
O.S.NO.3841/2018 ON FILE OF XXII ADDITIONAL CITY CIVIL JUDGE
AND SESSIONS JUDGE, BANGALORE REJECTING THE IA NO.34 FILED
UNDER ORDER 7 RULE 10 OF CPC FOR RETURN OF PLAINT.

THESE PETITIONS, COMING ON FOR ORDERS, THIS DAY, THE
COURT MADE THE FOLLOWING:



ORDER

1. CRP No.611/2023 is filed challenging the order dated 25.09.2023 passed by the XXII Additional City Civil and Sessions Judge, Bengaluru City in O.S No.3840/2018, by which, an application (IA No.45) filed by the petitioners under Order VII Rule 10 of CPC was rejected .

2. CRP No.630/2023 is filed challenging the order dated 25.09.2023 passed by the XXII Additional City Civil and Sessions Judge, Bengaluru City in O.S No.3842/2018, by which, an application (IA No.34) filed under Order VII Rule 10 of CPC was rejected.

3. CRP No.633/2023 is filed challenging the order dated 25.09.2023 passed by the XXII Additional City Civil and Sessions Judge, Bengaluru City in O.S No.3841/2018, by which, an application (IA No.34) filed under Order VII Rule of 10 CPC was rejected.

4. In all these petitions, the respondents were plaintiffs, while the petitioners were the defendants. They shall be referred to accordingly in this order to maintain clarity.



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5. The suits in O.S Nos.3840/2018, 3841/2018 and 3842/2018 were filed for ejection of the tenants/defendants/petitioners from the commercial premises bearing No.K-40, Siddaiah Road, Bengaluru - 560 027. It was claimed in all the suits that the suit properties belonged to the plaintiffs and that the portions of the same were leased out to the defendants in all the three suits.

6. The following reliefs were sought for in all the three suits:

"IN O.S.NO. 3840/2018

WHEREFORE, the plaintiffs above named humbly pray that this Hon'ble Court may be pleased to pass a Judgment and Decree against the defendants:

(a) Directing the defendants to vacate and handover the vacant possession of the schedule property to the plaintiffs and other owners of the remaining portion of Urvashi Theatre complex building who have filed two separate suits along with the above suit, as-is-where-is basis along with the constructed building thereon, failure to adhere to the same on part of the defendants, this Hon'ble Court may be pleased to vacate the defendants from the schedule property and to handover possession of the same to the plaintiffs as-is-where-is basis, through Court machinery of this Hon'ble Court;



(b) Direct the defendants to pay damages of Rs 25,00,000/- (Rupees Twenty five lakh only) per month from 24.04.2018 till the date of handing over possession of the schedule property to the plaintiffs as-is-where-is basis as per the terms of registered lease deed;

(c) To pass such other relief/s as this Hon'ble Court deems fit in the circumstances;

(d) Direct the defendants to pay the cost of the suit;

IN O.S.NO. 3841/2018

WHEREFORE, the plaintiffs above named humbly pray that this Hon'ble Court may be pleased to pass a Judgment and Decree against the defendants:

(a) Directing the defendants to vacate and handover the vacant possession of the schedule property to the plaintiffs and other owners of the remaining portion of Urvashi Theatre complex building who have filed two separate suits along with the above suit, as-is-where-is basis along with the constructed building thereon. failure to adhere to the same on part of the defendants, this Hon'ble Court may be pleased to vacate the defendants from the schedule property and to handover possession of the same to the plaintiffs as-is-where-is basis, through Court machinery of this Hon'ble Court:

(b) Direct the defendants to pay damages of Rs 12,50,000/- (Rupees Twelve lakh and fifty thousand only) per month from 24.04.2018 till the date of handing over possession of the schedule property to the plaintiffs as-



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is-where-is basis as per the terms of registered lease deed:

(c) To pass such other relief's as this Hon'ble Court deems fit in the circumstances;

(d) Direct the defendants to pay the cost of the suit;

IN O.S.NO.3842/2018

WHEREFORE, the plaintiffs above named humbly pray that this Hon'ble Court may be pleased to pass a Judgment and that this against the defendants;

(a) Directing the defendants to vacate and handover the vacant possession of the schedule property to the plaintiffs and other owners of the remaining portion of Urvashi Theatre complex building who have filed two separate suits along with the above suit, as-is-where-is basis along with the constructed building thereon. failure to adhere to the same on part of the defendants. this Hon'ble Court may be pleased to vacate the defendants from the schedule property and to handover possession of the same to the plaintiffs as-is-where-is basis, through Court machinery of this Hon'ble Court;

(b) Direct the defendants to pay damages of Rs 12,50,000/- (Rupees Twelve lakh and fifty thousand only) per month from 24.04.2018 till the date of handing over possession of the schedule property to the plaintiffs as-is-where-is basis as per the terms of registered lease deed;



(c) To pass such other relief's as this Hon'ble Court deems fit in the circumstances;

(d) Direct the defendants to pay the cost of the suit;"

7. When the suits were set down for arguments, the petitioners/defendants filed an applications under Order VII Rule 10 of CPC contending that the rent payable by the defendants admittedly was Rs.1,375/- per month in all the cases and therefore, the City Civil Court had no jurisdiction in view of Section 8 of the Karnataka Small Causes Court Act, 1964 (for short 'the Act of 1964'). Therefore, they prayed the Court to return the plaint. These applications were objected by the plaintiffs who contended that in addition to ejectment, the plaintiffs had also sought for recovery of damages at the rate of Rs.25,00,000/- per month, Rs.12,50,000/- per month and Rs.12,50,000/- per month respectively and therefore, the same was outside the pecuniary jurisdiction of the Small Causes Court.

8. The Trial Court after considering the contention urged, rejected the applications in terms of the order dated 25.09.2023 on the ground that the issues framed in the suit



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had to be decided by it. It noticed that the suit filed by the defendants in O.S No.3842/2018 was ordered to be clubbed at the instance of the defendants along with other suits and therefore, it was that Court alone which had jurisdiction to decide the suits. Therefore, it held that defendants are estopped from denying that the Court had no pecuniary jurisdiction to try the suits that too at a belated stage of the proceedings. Being aggrieved by the said orders, the tenants/defendants in the aforesaid suit have filed these civil revision petitions.

9. The learned counsel for the petitioners/defendants in all these petitions invited the attention of the Court to Section 8 of the Act of 1964 and contended that Small Causes Court established in the Metropolitan City of Bengaluru is entitled to exercise jurisdiction concerning matters which are provided in Schedule I of the Act of 1964. As a result, he submits that all suits for ejectment by a landlord have to be dealt with by the Small Causes Court only and no other Courts. He also invited attention of this Court to Section 9 of the Act of 1964 and contended that the jurisdiction of the Civil Court is



expressly ousted and therefore, the Civil Court has no jurisdiction to try the suit. He also submitted a suit for mesne profit can also to be tried by the Small Causes Court as provided under Entry 28 of Schedule I of the Act of 1964. In this regard, he relied upon the judgment of the Full Bench of this Court in the case of **Abdul Wajid v. A.S.Onkarappa** reported in **ILR 2011 KAR 229** and contended that this Court categorically held that all suits for ejectment in respect of the premises to which the provisions of the Karnataka Rent Act, 1999 are not applicable are to be dealt with by the Small Causes Court only. He also invited the attention of the Court to paragraph No.93 and contended that it is the rent payable for one year prior to the presentation of the plaint which is a marker to determine the jurisdiction and any suit for recovery of mesne profit also has to be tried by the Court of Small Causes. He referred to paragraph No.98 which reads as follows:

"98. Therefore, we hold that Courts of Small Causes have jurisdiction to take cognizance of not only a bare suit for Ejectment but also a suit for Ejectment with a prayer for recovery of mesne profits or damages, in respect of the premises to which KR Act is not applicable. In View of this,



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we hold that the interpretation placed by the Division Bench in Sarojamma's case, on Clause (b) of Article 4 of Schedule to KSCC Act does not lay down the correct law."

10. The learned counsel for petitioners relied upon the judgment in the case of **Harshad Chiman Lal Modi v. DLF Universal Ltd and another** reported in **(2005) 7 SCC 791** and contended that the parties cannot vest jurisdiction and though objections regarding territorial and pecuniary jurisdiction had to be taken at the earliest possible opportunity where the Court has no jurisdiction, the same could be assailed at any stage of the proceedings. He referred to the judgment of Co-ordinate Bench of this Court in the case of **Ramesh P.Seth v. M.S.Krishna Murthy and Another** reported in **ILR 2002 KAR 565** and contended that this Court held in paragraph No.6 which reads as follows:

"6. Therefore, Section 31 of the K.R.C. Act exempts the operation of Part V dealing with control of eviction of tenants and the obligation of the landlords to a non-residential building, the monthly rent of which exceeds Rs. 500.00. The said section does not exclude the application of other parts and provisions of the K.R.C. Act to the lease in respect of non-residential building the monthly rent of which exceeds Rs. 500.00. In view of the definition of tenant, contained in Section



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3(r) of the K.R.C. Act, a person continuing in possession after termination of the tenancy in his favour, also would be a tenant. Even after the tenancy of a tenant of a non-residential building the monthly rent of which exceeds Rs. 500.00 terminated, he continues to be a tenant and he is liable to pay the agreed rent to the landlord even after the termination. His position after the termination of the tenancy would not become unlawful and his liability to pay rent does not cease. With the termination of contractual tenancy, statutory tenancy commences under the K.R.C. Act, Therefore, the question of such a tenant paying damages for use and occupation or compensation for use and occupation of the leased premises after the termination of the tenancy or paying mesne profits does not arise, because of the application of the K.R.C. Act. All the other rights and obligations and the liabilities continue to operate under the K.R.C. Act."

11. He also referred to another judgment of Co-ordinate Bench of this Court in W.P No.65/2013 dated 10.01.2013 and contended that following the judgment of Full Bench of this Court, this Court had held that a suit for ejectment had to be tried by the Small Causes Court only.

12. Per contra, the learned Senior Counsel representing the plaintiffs contended that the defendants had filed O.S No.3858/2016 for extending the lease of the premises in



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question. In the said suit, an application was filed by the petitioners/defendants for clubbing O.S No.3858/2016 along with suit in O.S No.3840/2018 and other suits. The application filed by the defendants to club all the suits was rejected by the Trial Court and the defendants filed W.P Nos.27007/2019, 27009/2019, 27010/2019, 27011/2019, 27012/2019 and 27013/2019 before this Court and prayed that all the suits be clubbed as it involved the same subject matter. This Court in terms of the order dated 03.07.2019 allowed the petitions and directed all the suits to be clubbed and a common trial to be held. He therefore contended that the defendants invited an order from this Court that all the suits have to be tried together. If that be so, he contends that the defendants are now estopped from contending that the suits filed for ejectment have to be tried by the Small Causes Court. He contends that the issues that are framed by the Court in O.S No.3858/2016 cannot be adjudicated upon by the Small Causes Court. He next contends that the suits are filed not only for ejectment but also for recovery of damages of a sum of Rs.25,00,000/-, Rs.12,50,000/-, Rs.12,50,000/- respectively and therefore, it is outside the pecuniary jurisdiction of the Small Causes Court.



He contends that the pecuniary limit of the Small Causes Court is incorporated under Section 8 of the Act of 1964 which reads as following:

"8. Cognizance of suits by Courts of Small Causes.—

(1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of a civil nature of which the value does not "one lakh rupees" in other places, shall be cognizable by a court of small causes."

Provided that the State Government, in consultation with the High court, may by notification, direct that all suits of which the value does not exceed [twenty five thousand rupees] shall be cognizable by a Court of Small Causes mentioned in the notification."

13. He therefore contends that since the present suits are filed for recovery of damages of sums exceeding Rs.2,00,000/-, the Small Causes Court has no jurisdiction to decide the suits. He contends that indisputably a suit for recovery of damages, which does not exceed the pecuniary



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limits of the Small Causes Court can be entertained by the Small Causes Court but if it spills over the sum of Rs.2,00,000/-, the Small Causes Court has no jurisdiction. The learned counsel also relied upon the judgment of Full Bench of this Court in the case of **Abdul Wajid v. A.S.Onkarappa** reported in **ILR 2011 KAR 229** and contended that jurisdiction being a threshold test, has to be examined with respect to the reliefs sought for in the suit and not in vacum. He contended that the jurisdiction of the Small Causes Court as founded by the Full Bench is limited to examine whether there exists a relationship of landlord and tenant and if the answer is in the affirmative then the question, whether the relationship is properly terminated in accordance with law would be considered. He contended that a perusal of the plaint filed by the defendants in O.S No.3858/2016 and the written statement filed in O.S No.3840/2018 and others discloses that the defendants denied the title of the plaintiffs in the suit property and therefore the suit is more or less for the recovery of possession based on title and hence it is the Civil Court which has jurisdiction.



14. I have considered the submissions of learned counsel for petitioners and learned counsel for respondents in all these petitions.

15. In these petitions, we are only concerned with the jurisdiction of the Small Causes Court to entertain the suits filed by the plaintiffs/respondents herein.

16. The suits in O.S Nos.3840/2018, 3841/2018 and 3842/2018 were filed for the reliefs stated *supra*.

17. The valuation slip indicates that the suits were valued under Section 41 of the Karnataka Court Fees and Suits Valuation Act, 1958 claiming that the defendants were the tenants occupying portions of the commercial property and that the rent payable was a sum of Rs.1,375/- per month. Therefore, even as per the understanding of the plaintiffs, the suits were for relief of ejectment of the tenants from suit schedule property. Now coming to the question whether the Small Causes Court or the Civil Court has jurisdiction to try the suit or not, Section 8 of the Act of 1964 is relevant and the same is extracted below:



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"8. Cognizance of suits by Courts of Small Causes.—

(1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of a civil nature of which the value does not "one lakh rupees" in other places, shall be cognizable by a court of small causes.

Provided that the State Government, in consultation with the High court, may by notification, direct that all suits of which the value does not exceed [twenty five thousand rupees] shall be cognizable by a Court of Small Causes mentioned in the notification."

18. A perusal of the Schedule I of the Act of 1964 discloses that every suit for ejectment by a landlord against the tenant has to be tried by the Small Causes Court subject to the limits of its pecuniary jurisdiction namely a sum of Rs.2,00,000/-. Likewise, the Small Causes Court is also entitled to entertain a suit for mesne profit which is again subject to the limits of its pecuniary jurisdiction. In the case on hand, the suits were undoubtedly filed for ejectment of the petitioners/defendants from the suit properties and agreed rent.



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is a sum of Rs.1,375/- per month in all the cases. Ordinarily, the suit must have been tried by the Small Causes Court but for the fact that the plaintiffs had also sought for relief of recovery of damages of Rs.25,00,000/-, Rs.12,50,000/- and Rs.12,50,000/- respectively. When a suit is filed for recovery of damages for a sum of Rs.25,00,000/-, Rs.12,50,000/- and Rs.12,50,000/- respectively it was outside the jurisdiction of the Small Causes Court and therefore, such a suit could not have been filed before the Small Causes Court as it could not have granted a decree of recovery of damages of a sum of Rs.2,00,000/-, Rs.12,50,000/- and Rs.12,50,000/- respectively. This apart, the defendants who were aware of the fact that they were tenants occupying portions of the suit schedule properties had filed O.S No.3858/2016 for extension of lease, could not have slept over the fact that suits in O.S Nos.3840/2018, 3841/2018 and 3842/2018 were filed before the City Civil Court, Bengaluru. They did not raise any objection from the date the suits were filed till the date the cases were taken up for final arguments. On the contrary, they desired that all the suits filed by them as well the plaintiffs in O.S Nos.3840/2018, 3841/2018 and 3842/2018 be clubbed and heard together and

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though the Trial Court rejected the applications initially, the same was challenged by the defendants/petitioners herein before this Court in various writ petitions and they invited an order in terms of which, all suits were ordered to be tried together. Therefore, the defendants cannot now at the fag end of the proceedings contend that the Civil Court had no jurisdiction to entertain the suits filed by the plaintiffs for ejectment of defendants in the suit property.

19. In that view of the matter, there is no error apparent on the face of the record warranting interference by this Court. Consequently, all these petitions are **dismissed**.

All contentions are left open to be considered by the Trial Court.

Sd/-
JUDGE

UN
List No.: 1 Sl No.: 46

T/c

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IN THE SUPREME COURT OF INDIA

[S.C.R. ORDER XXI RULE 3 (1) (A)]

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO. OF 2023

(Under Article 136 of the Constitution of India)

WITH A PRAYER FOR INTERIM RELIEF

(Against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) APPEALED FROM)

POSITION OF PARTIES BEFORE
TRIAL COURT HIGH COURT THIS
HON'BLE COURT

Civil Revision Petition No. 630 OF 2023(IO)

IN THE MATTER OF:-

1. M/s Sreenivas Enterprises
Represented by the Managing Partners:
Sri.K.R.Ravishankar &
Smt.Anitha Ravishankar,
Vittoba Temple Street,
Doddaballapura,
Doddaballapura Taluk,
Bengaluru-561203
KARNATAKA Def No.1 Petitioner No.1 Petitioner No.1
2. Sri. K.R. Ravishankar
S/o K.C.Rudre Gowda,
Aged about 64 Years,
Managing Partner,
M/s. Sreenivasa Enterprises
C/o Urvashi Theatre,

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No.K-40, H.Siddaiah Road,
Bengaluru-560027

Karnataka

Def No.2

Petitioner No.2

Petitioner No.2

3. Smt. Anitha Ravishankar
W/o K.R.Ravishankar,
Aged about 60 Years,
M/s. Sreenivasa Enterprises
C/o Urvashi Theatre,
No.K-40, H.Siddaiah Road,
Bengaluru-560027.

Karnataka

Def No.3

Petitioner No.3

Petitioner No.3

VERSUS

1. Shri B.V. Narayan
S/o Late B.V. Venkataramana Setty
Aged about 86 years
R/at No.100/24, 10th 'D' Main Road,
1st Block, Jayanagar,
Bengaluru-560011
Karnataka

Plaintiff No.1 Respondent No.1 Respondent No.1

- Sri B. V. Chandrasekar
S/o B.R.Venkataramana Setty,
Aged about 79 Years,
residing at No.100/24,
10th 'D' Main Road, 1st Block,
Jayanagar, Bengaluru-560011

Karnataka

Plaintiff No.2 Respondent No.2

Since Dead Through LRs

2. SMT. JALAJA SHEKAR
W/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 69 YEARS
R/AT. NO.100/24
10TH 'D' MAIN ROAD
1ST BLOCK, JAYANAGAR
BANGALORE 560 011
KARNATAKA

NA Respondent No.2(a) Respondent No.2

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3. SRI. HEMANTH CHANDRASHEKAR
S/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 46 YEARS
R/AT. NO.100/24
10TH 'D' MAIN ROAD
1ST BLOCK, JAYANAGAR
BANGALORE 560 011
KARNATAKA

NA Respondent No.2(b) Respondent No.3

4. SRI. ANUP BANGALORE CHANDRASHEKAR
S/O. LATE B.V.CHANDRASHEKAR
AGED ABOUT 43 YEARS
ALL ARE R/AT. NO.100/24
10TH 'D' MAIN ROAD
1ST BLOCK, JAYANAGAR
BANGALORE 560 011
KARNATAKA

NA Respondent No.2(c) Respondent No.4

**ALL THE RESPONDENT ARE CONTESTING
RESPONDENTS**

PARTIES ARE SAME AS BEFORE THE HIGH COURT

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF THE HON'BLE SUPEREME
COURT OF INDIA

THIS HUMBLE PETITION OF THE PETITIONERS ABOVENAMED

MOST RESPECTFULLY SHOWETH:

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1. That the instant petition seeking special leave to appeal is being filed by the Petitioner above named against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) whereby which the Hon'ble High Court has dismissed the civil revision petition of the Petitioners herein.

- 1A. No LPA, Special Appeal & Writ Petition/Writ Appeal lies against the Impugned order.

2. QUESTIONS OF LAW:

The following questions of law of general public importance arise in the facts of the instant case which merits an authoritative determination from this Hon'ble Court:

- A. Whether the Hon'ble High Court failed to appreciate that under section 9 of the Karnataka Small Cause Courts Act, 1964, exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance?

- B. Whether the Hon'ble High Court failed to appreciate that the exclusive jurisdiction conferred under Section 9 of the Karnataka Small Cause Courts Act, 1964, would be determined only based on rent payable for the year before the presentation of the suit and nothing else, as held by the full bench of the Hon'ble High Court in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532 and followed by the Coordinate benches in *M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013* ?
- C. Whether the Hon'ble High Court has failed to appreciate that the quantum of the damages claimed by the Respondent/Plaintiff in the nature of mesne profit are irrelevant for the determination of the pecuniary jurisdiction of the Ld. Small Causes Court as was held in the case of *Sandeep Chowhan v. Krishnaraj Bhat*, 2015 SCC OnLine Kar 8590?
- D. Whether the Hon'ble High Court could have ignored the valuation specified by the Respondent in the valuation sheet of the suit, where the plaint was valued under Section 41 (2) of the Karnataka Court Fees & Suit Valuation Act 1958, for the relief of ejection of the petitioner from schedule property?

- E. Whether the Hon'ble High Court failed to notice that this Hon'ble Court have in a catena of cases held that the consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings?
- F. Whether the Hon'ble High Court failed to appreciate that having regard to the mandate of section 9 of the Karnataka Small Cause Court Act, the proceeding before the Ld. City Civil Court is a nullity, as it is a well-established rule of law that a nullity remains a nullity and can be so declared at any stage ?
- G. Whether the Hon'ble High Court failed to appreciate that, mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon'ble Court in *Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd.*, 2023 SCC OnLine SC 1614, has held that a suit for possession and a suit for mesne profit constitute distinct causes of action. ?
- H. Whether the Hon'ble High Court erred in overlooking the principle laid down by this Hon'ble Court in *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 and *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791 ?

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3. **DECLARATION IN TERMS OF RULE 3 (2) :**

The Petitioner states that no other Petition seeking special leave to appeal has been filed by the Petitioner against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO).

4. **DECLARATION IN TERMS OF RULE 5 :**

The Petitioner states that the annexures being Annexures P/1 to P/6 produced along with the present Special Leave Petition are true and correct copies of their respective originals and formed a part of the record of the Court(s) below against whose Order/ Judgment the leave to appeal is sought in the present Petition.

5. **GROUND S :**

The instant petition seeking special leave to appeal is being filed on, among others, the following grounds which may be considered as being without prejudice to each other:

- A. Because under section 9 of the Karnataka Small Cause Courts Act, 1964 ("the SCC Act") the exclusive jurisdiction to entertain a suit for ejectment of tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance.
- B. Because the exclusive jurisdiction conferred under Section 9 of the SCC Act, would be determined only on the basis of rent payable for the year next before the presentation of the suit and nothing else, as held by the full bench of the Hon'ble High Court in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532 and followed by the Coordinate benches in *Sandeep Chowhan v. Krishnaraj Bhat*, 2015 SCC OnLine Kar 8590 and *M/s Shravana Minerals v. R. Jayalakshmi* W.P. No. 65/2013.
- C. Because the High Court failed to appreciate under section 9 of the SCC Act the exclusive jurisdiction to entertain a suit for ejectment of the tenant is with the Ld. Court of Small Cause and the Civil Courts are barred from taking cognizance and where the value of the suit should not exceed two lakh rupees.

Section 8. Cognizance of suits by Courts of Small Causes.- (1) A Court of Small Causes shall not take cognizance of the suits specified in the Schedule as suits excepted from the cognizance of a Court of Small Causes.

(2) Subject to the exception specified in the schedule and to the provisions of any law for the time being in force, all suits of civil nature of which the value does not exceed "two lakh rupees" in Bangalore City, "one lakh rupees" in other places, shall be cognizable by a court of small causes.

Section 9. Exclusive jurisdiction of Courts of Small Causes. –
Save as expressly provided by this Act or by any other law for the time being in force, a suit cognizable by a Court of Small Causes shall not be tried by any other Court having jurisdiction, within the local limits of the jurisdiction of the Court of Small Causes by which the suit is triable

- D. Because the Hon'ble High Court had erred in holding the value of compensation claimed by the Respondent/Plaintiff, being Rs. 12,50,000/- would oust the jurisdiction of the Court of Small Causes. The said finding of the Single Judge Bench of the Hon'ble High Court is directly contrary to the law laid down by the full bench of the Hon'ble High Court in *Abdul Wajid v. A.S. Onkarappa*, 2010 SCC OnLine Kar 4532. In the said judgement it is settled by the High Court that for the purpose of finding out the pecuniary jurisdiction of the Court of Small Cause Court what is relevant is the 'rent' payable for the year before the date of presentation of the plaint, for in terms of Sec. 41(2) of Karnataka Court Fees & Suits Valuation Act 1958 ("KCFSC Act") and nothing else. Relevant parts of the aforementioned judgment are as follows:

93. What is relevant for the purpose of deciding the pecuniary jurisdiction of the Court in terms of Sec. 41(2) of KCFSV Act is the 'rent' payable for the year next before the date of presentation of plaint. Law does not insist the landlord to file the suit soon after the expiry of the period of lease or expiry of fifteen days from the date of service of notice of termination of lessee, as, Article 67 of Limitation Act prescribes a period of twelve years from the date of determination of tenancy for a landlord to file a suit to recover possession from the tenant. Even if a suit for ejectment is filed after lapse of one year of determination/termination of lease/tenancy, for the purpose of finding out the pecuniary jurisdiction of the Court what is relevant is the rent payable for one year prior to the presentation of the plaint. As the consideration paid or payable by an erstwhile non-statutory tenant after determination/termination of lease is only mesne profits or damages, and no rent is payable thereafter, by way of Explanation to Sec. 41(2), the term 'rent' used in the said section is made inclusive of damages for use and occupation payable by a tenant holding over. Therefore, the term 'rent' occurring in Clause (b) of Article 4 of the Schedule, is referable only to the 'Rent' payable for the year next before the presentation of the plaint in terms of Sec. 41(2) of KCFSV Act, for the purpose of finding out the pecuniary jurisdiction of the Court of Small Causes and nothing else

98. Therefore, we hold that Courts of Small Causes have jurisdiction to take cognizance of not only a bare suit for Ejectment but also a suit for Ejectment with a prayer for recovery of mesne profits or damages, in respect of the premises to which KR Act is not applicable. In view of this, we hold that the interpretation placed by the Division Bench in Sarojamma's case, on Clause (b) of Article 4 of Schedule to KSCC Act does not lay down the correct law.

E. Because the Respondent at the time of the presentation of plaint the Respondent had valued the rent payable for the year before the date

of presentation of the plaint, u/s 41(2) of KCFSV Act, at INR 16,500/- (i.e. INR 1,375 x 12 months). Thus, admittedly the suit for ejectment filed by the Respondent falls under the exclusive jurisdiction of the Court of Small Cause and the Ld. Civil Court is barred from taking cognizance.

F. Because the Hon'ble High Court failed to appreciate that, mere plea for mesne profits does not divest the Ld. Small Cause Court of its exclusive jurisdiction over the cause of action, such as over a suit for ejectment. This Hon'ble Court in *Bharat Petroleum Corpn. Ltd. v. ATM Constructions (P) Ltd.*, 2023 SCC OnLine SC 1614, has held that a suit for possession and a suit for mesne profit constitute distinct causes of action. Hence, the mere request for mesne profit cannot undermine the exclusive jurisdiction of the Ld. Small Cause Court over any cause of action.

G. Because the Impugned Order is not only contrary to the aforestated full bench judgment but is also divergent from the judgement of the coordinate benches of the Hon'ble High Court, namely *Sandeep Chowhan v. Krishnaraj Bhat*, 2015 SCC OnLine Kar 8590 and *M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013*, wherein the Court had held that for determining pecuniary jurisdiction of

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the Small Cause Court, the amount of future mesne profit sought will not have any relevance. Relevant extract judgments are reproduced below:

Sandeep Chowhan v. Krishnaraj Bhat, 2015 SCC OnLine Kar 8590

9. As rightly contended by the Learned Counsel for the revision petitioners, future mesne profits will not determine the cause of action. The cause of action on the date of institution of the suit will have no relevance to the mesne profits which the defendant – Tenant would be liable to pay for occupation of the premises during the pendency of the suit. It would not be possible for the plaintiff to plead cause of action or to value his suit based on the future mesne profits for the purpose of pecuniary jurisdiction or for that matter for the purpose of payment of Court fee. Therefore, for determining pecuniary jurisdiction of the Small Cause Court, the amount of future mesne profit sought will not have any relevance.

M/s Shravana Minerals v. R. Jayalakshmi W.P. No. 65/2013.

It is clear, for the purpose of finding out the pecuniary jurisdiction of the court what is relevant is rent payable for one year prior to the presentation of the plaint and nothing else. The rent payable in the present case is Rs. 1,000/- per month which comes Rs. 12,000/- per annum. Therefore, the small causes court has jurisdiction to try the case. The impugned order does not call for interference. There is no merit in this writ petition and therefore, it is liable to be dismissed.

H. Because no action of the party can confer jurisdiction to the Civil Court on the subject matter, which is excluded by statute, as held by this Hon'ble Court in (2013) 10 SCC 136, 1954 SCC OnLine SC 11 and (2005) 7 SCC 791.

- I. Because the Hon'ble High Court has failed to appreciate that it is settled law that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties and the decision of the court having no jurisdiction over the matter would be a nullity, as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings and the doctrine of waiver also does not apply. The aforesaid principle is reiterated by this Hon'ble Court in a plethora of judgments, e.g. *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 and *Harshad Chiman Lal Modi v. DLF Universal Ltd.*, (2005) 7 SCC 791.
- J. Because this Hon'ble Court has in its judgment *Jagmittar Sain Bhagat v. Health Services, Haryana*, (2013) 10 SCC 136 has held the following:

9. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior court, and if the court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the root of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a court or tribunal becomes irrelevant and unenforceable/inexecutable once the forum is found to have no jurisdiction. Similarly, if a court/tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetrate and perpetuate defeating of the

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legislative animation. The court cannot derive jurisdiction apart from the statute. In such eventuality the doctrine of waiver also does not apply... "

- K. Because the mere fact that the Petitioner, had prayed for clubbing of suit filed for renewal of the lease with the Respondent's suit seeking ejectment, cannot confer jurisdiction upon the Ld. Civil Court over the subject matter, which is barred under the statute, i.e. the Small Cause Court Act. It is also apposite to mention that the division bench of the Hon'ble High Court has also held the aforesaid in *Shivamurthi Mallayya Swami v. Mahadev Umarane*, 1989 SCC OnLine Kar 2, wherein it was held that:

31. It is, therefore, clear that the fact that the defendant did not raise any objection to the jurisdiction of the Court of the Munsiff would not ensure for the benefit of the plaintiff to contend that the decree is not a nullity. Consent of parties cannot confer jurisdiction on the Court and an objection to jurisdiction can be raised at any stage in the proceedings. It is a well established rule of law that a nullity remains a nullity and can be so declared at any stage.

34. On facts, it is clear that when the suit was tried and disposed of, there was no jurisdiction in the Court of the Munsiff to try it. Having regard to the imperative command in Section 9 of the Small Cause Courts Act, the decree, in our opinion, has to be held as a nullity.

- L. Because the impugned judgment passed by the Hon'ble High Court requires to be interfered with as it is in disregard of the above-mentioned grounds and liable to have interfered and set aside

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6. GROUND FOR INTERIM RELIEF :

- (1) That the instant petition seeking special leave to appeal is being filed by the Petitioners above named against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) whereby which the Hon'ble High Court has dismissed the Civil Revision Petition of the Petitioners herein.
- (2) That the Petitioners have a good prima facie case in law and has every hope to succeed in the instant Special Leave Petition.
- (3) That the balance of convenience is also lies in the favour of the Petitioners and the Petitioners will suffer grave hardship if the interim relief as prayed for is not granted.
- (4) That the Petitioners will suffer great irreparable harm if the Impugned Order is not stayed during the pendency of the instant Special Leave Petition.

- (5) That therefore it is in the interests of justice that the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO) and the proceedings in OS No.3842/2018 before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru may be stayed during the pendency of the instant Special Leave Petition.

7. MAIN PRAYER :

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Grant special leave to appeal against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023 (IO); and
- b. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

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8. PRAYER FOR INTERIM RELIEF :

In the facts and circumstances mentioned above and in light of the grounds mentioned above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- a. Stay the operation and effect of the against the final judgment and order dated 27.11.2023 passed by the Hon'ble High Court of Karnataka at Bengaluru in Civil Revision Petition No.630 of 2023(IO); and
- b. Stay the proceedings in OS No.3842/2018 before the Court of XXII Additional City Civil and Sessions Judge, Bengaluru
- c. Pass any other orders as this Hon'ble Court may deem fit in the facts and circumstances of the instant case.

AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY

DRAWN BY & FILED BY:

Aravind Manohar
AP&J CHAMBERS

ADVOCATE FOR THE PETITIONERS

DRAWN ON: 19.12.2023

FILED ON: 19.12.2023

NEW DELHI

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO.

OF 2023

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others

... Petitioners

VERSUS

Shri. B. V. Narayan and Others

... Respondents

CERTIFICATE

"Certified that the Special Leave Petition is confined only to the court whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner/person authorized by the Petitioner whose Affidavit is filed in support of the Special Leave Petition."

FILED BY:

Anantika Manohar
(AP&J CHAMBERS)

NEW DELHI:

ADVOCATE FOR THE PETITIONERS

FILED ON: 19.12.223

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (C) NO. OF 2023

IN THE MATTER OF:

M/s Sreenivas Enterprises and Others

... Petitioners

VERSUS

Shri. B. V. Narayan and Others

... Respondents

AFFIDAVIT

I, Sri. K.R. Ravishankar, S/o K.C. Rudre Gowda, aged about 64 years, Managing Partner, M/s. Sreenivasa Enterprises c/o Urvashi Theatre, No. K-40, H. Siddaiah Road, Bengaluru-560027, Karnataka presently at New Delhi do hereby solemnly affirm and state as follows:-

1. I say that I am the Petitioner No.2 in the present Special Leave Petition and I am well conversant with the facts, proceedings and circumstances of the case and hence competent to swear this affidavit. I am also authorized to depose on behalf of the Petitioner Nos.1 and 3 as well.
2. That I have read and understood the contents of the Paras 1 to 8 at Pages (23-48) of the Special Leave Petition, along with the interim relief, list of dates at Pages (B - A) and the I.A.s and I say that the contents thereof are true and correct to the best of my knowledge.
3. I say that the Annexures filed along with the Special Leave Petition are true copies of their respective originals.
4. I say that I have not filed any other Special Leave Petition in this Hon'ble Court against the impugned judgment and order.



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5. I say that the averments of facts stated herein above are true to my knowledge and belief, no part of it is false and nothing material has been concealed therefrom.

[Signature]
DEPONENT

VERIFICATION

I, the deponent above named do hereby verify and state that the contents of the Special Leave Petition and List of dates are true and correct to the best of my knowledge and belief.

Verified on this 19th day of December, 2023 at New Delhi

[Signature]
DEPONENT



ATTESTED

[Signature]
DIPANKAR DAS
ADVOCATE
NOTARY PUBLIC
REGD. NO. 916
GOVT. OF INDIA
LAWYERS CHAMBER
SUPREME COURT OF INDIA
NEW DELHI

12-23

[Signature]