

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

**DATED THIS THE 13<sup>TH</sup> DAY OF FEBRUARY, 2025**

**PRESENT**

**THE HON'BLE MR JUSTICE KRISHNA S DIXIT**

**AND**

**THE HON'BLE MR JUSTICE G BASAVARAJA**

**WRIT PETITION NO.27396 OF 2024 (GM-CON)**

**BETWEEN:**

BRIGADE ENTERPRISES LIMITED  
A COMPANY INCORPORATED UNDER  
COMPANIES ACT, 1956  
HAVING ITS REGISTERED OFFICE AT  
29<sup>TH</sup> AND 30<sup>TH</sup> FLOOR, WORLD TRADE CENTER,  
BRIGADE GATEWAY CAMPUS, 26/1,  
DR.RAJKUMAR ROAD, MALLESWARAM-  
RAJAJINAGAR, BANGALORE.  
REPRESENTED BY ITS AUTHORIZED REPRESENTATIVE,  
MR.UDAY KUMAR A.

...PETITIONER

(BY SRI.P CHINNAPPA., ADVOCATE FOR  
SMT.SAHANA DEVANATHAN., ADVOCATE)

**AND:**

1 . AQIL PASHA  
AGED MAJOR,  
NO.7, 3<sup>RD</sup> E MAIN, RAMAIAH LAYOUT,  
KAMMANAHALLI, BANGALORE – 560 084.

2 . TUBA ANUM  
AGED MINOR  
REPRESENTED BY MR. AQIL PASHA AND  
MRS. PARVEEN AQIL,  
NO.7, 3<sup>RD</sup> E MAIN, RAMAIAH LAYOUT,  
KAMMANAHALLI, BANGALORE – 560 084.

...RESPONDENTS

(BY SRI.AQIL PASHA(PARTY IN PERSON) FOR R1;  
KUM. TUBA ANUM –R2 BEING MINOR, REP BY R1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO A) CALLING FOR THE RECORDS OF THE COMPLIANT NO.76/2020 PENDING ON THE FILE OF THE HON'BLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION AT BENGALURU (ADDITIONAL BENCH) AND B) SETTING ASIDE THE IMPUGNED ORDERS DATED 09.09.2024, DISMISSING/REJECTING THE PETITIONERS APPLICATIONS DATED 09.09.2024, IN THE COMPLIANT NO.76 OF 2020 PENDING ON THE FILE OF THE HON'BLE KARNATAKA STATE CONSUMER DISPUTES REDRESSAL COMMISSION AT BENGALURU (ADDITIONAL BENCH)(ANNEXURE-A) AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S. DIXIT.J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR JUSTICE KRISHNA S DIXIT  
and  
HON'BLE MR JUSTICE G BASAVARAJA

**CAV ORDER**

(PER: HON'BLE MR JUSTICE KRISHNA S DIXIT)

This judgement needs to be written with a pen dipped in tears. The facts of this case are peculiar & heart wrenching and therefore, it is treated peculiarly. Both nature & men having conspired against, a young couple died in mysterious circumstances, leaving behind a little girl child, for whose custody a legal battle was fought between the maternal parents in law on the one side & the paternal, on the other.

2. One Mr. Mohd. Shafiuddin Shadab had booked the flat in question vide Agreements of Construction dated 09.03.2015; He had espoused a gentle lady Sana Aqil and the couple begot a girl child namely Tuba Anam. The couple is said to have been done away with. There was custody proceedings concerning the minor child in G & WC No.305/2017, that eventually got disposed off appointing the maternal grandparents as guardians vide order dated 08.04.2019. That was put in challenge in MFA No.7520/2019 and we are told at the Bar that there is an amicable settlement whereunder the said child is presently given to the custody of 1<sup>st</sup> Respondent herein.

3. In the meanwhile, the Respondents had filed Complaint No.76/2020 grieving against the Petitioner – Builder herein that despite receipt of the entire amount the flat was not handed and therefore, Petitioner should be directed to hand over the same by executing necessary conveyance in favour of the girl child and further, a direction be issued for paying the damages etc., Evidence having been recorded, matter came to be reserved for

judgement by the State Commission allegedly without giving due opportunity to the Petitioner-Builder.

4. After service of notice, the Respondents have appeared in person and resisted the Petition highlighting the circumstances mentioned above and asserting that the Builder has taken undue advantage of the pathetic circumstances of the deceased couple and the helpless child and therefore, no indulgence should be shown to the Builder of the kind. With heavy heart, we noted the years passed by, no relief being handed to the consumers in respect of the transaction in which almost entire payment is made barring the alleged short fall.

5. Regard being had to peculiar fact matrix of this case involving unnatural death of an innocent couple and the helpless minor girl child who is being brought up by the Respondent – grandparents herein, we thought it fit and accordingly, requested a Sr. Advocate and the former Advocate General for the State Mr. Ashok Harnahalli to mediate between the parties, which he appreciably did. Our order dated 05.02.2025 which reads as under:

"At 11.30 AM:

*Sri Ashok Haranahalli, learned Senior Counsel is requested to mediate between the parties this day.*

*Respondents- party in person are present.*

*A carbon copy of this order be issued to all the concerned.*

At 1.00 PM:

*The matter having been argued for some time by learned counsel for the Petitioner and the Respondents – party in person, we found elements of possible amicable settlement and therefore, on our request, learned Sr. Advocate Mr. Ashok Harnahalli mediated between the parties and suggested that totally a sum of Rs.18,00,000/- (Rupees Eighteen Lakh) only be paid by the Respondents and the same may be treated as full satisfaction of what arguably due to the Petitioner's side. At this point of time, Court reminded learned counsel appearing for the Petitioner that in many matters, this Court (of course, in accordance with law) has granted relief to the Petitioner – builder of repute.*

*At this stage, learned counsel on record for the Petitioner seeks time to confer with his client & come back.*

*Call this matter on 12.02.2025.*

*..."*

6. When the matter was taken up for consideration, learned counsel for the Petitioner submitted that his client is agreeable to execute the registered sale deed if the Respondents make a payment of Rs.22,00,000/- (Rupees Twenty Two Lakh) only, though what is due is little more. Per contra, Respondents – party

in person submit that not even a rupee is payable from their side, although they are agreeable to pay a sum of Rs.18,00,000/- (Rupees Eighteen Lakh) only as suggested by the Mediator Mr. Ashok Harnahalli.

7. The dispute is in a narrow compass; the gap between the claim of Builder & repulsion of Consumer is just Rs.4,00,000/- (Rupees Four Lakh) only. The litigation began before the Consumer Forum way back in the year 2020 on the basis of Builder's Agreement dated 09.03.2015. From the date of Agreement, if time is reckoned, it is exactly a decade, a bit more too. How many more years would pass by, not even a leaf of justice being turned, remains a mystery wrapped in enigma. That is how the present litigation process is and we say this with penury at heart. We repeat that the Petitioner-a mighty Builder is invoking extraordinary jurisdiction of this court constitutionally vested under Articles 226 & 227 alleging flaw in the proceedings of the Forum. Flaws & laws do not go together is true; however, in their competition/conflict, justice should not be the victim. In a

latest decision in M.S.SANJAY vs. INDIAN BANK<sup>1</sup>, the Apex Court has reiterated the position as under:

*'It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.'*

This dicta by the highest court of the Country we have kept at heart while adjudging this peculiar case brought before us.

8. Petitioner is a Builder of repute, cannot be much disputed. We hasten to add that he has nothing to do with the young couple withering away in thin air being the victims of onslaught at the hands of other. Petitioner is invoking the Constitutional Jurisdiction pleading some arguable infirmities in the proceedings of the State Consumer Redressal Forum. Be that as it may. There is evidentiary material on record that vouches the payment of the monies agreed to be paid under the arrangements in question. May be that there is a shortfall in payment.

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<sup>1</sup> 2025 LiveLaw (SC) 193

The person who booked the flat is dead & gone; so is, his spouse. Only the girl child survives. Of course, it is under the shelter of grandparents one of whom happens to be the 1<sup>st</sup> Respondent herein. Regard being had to a short gap i.e., Rs.4 lakh only and some fault attributable to the builder as well, going by the record, we deem it appropriate to direct the Respondents to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakh) only within three months and on receipt thereof, Petitioner shall execute & register the sale deed in favour of the 2<sup>nd</sup> Respondent minor child Chi. Tuba Anum, as represented by the 1<sup>st</sup> Respondent – Grandfather within four weeks, from the date of receipt of the said amount.

9. If delay is brooked by the Petitioner in executing the sale deed despite receipt of the said amount, it shall pay to the 2<sup>nd</sup> Respondent a sum of Rs.2,500/- per day for the first month, and Rs.5,000/- per day for the days next following. It is also open to the Respondents to make an appropriate application to this Court for getting the sale deed executed through the Court

Commissioner as well, if Petitioner fails to do it as directed above. Accordingly, Respondents' Complaint No.76/2020 pending on the file of Karnataka State Consumer Disputes Redressal Commission is disposed off.

Ordered accordingly and Writ Petition is disposed off, costs having been made easy.

**Sd/-  
(KRISHNA S DIXIT)  
JUDGE**

**Sd/-  
(G BASAVARAJA)  
JUDGE**

Bsv, cbc  
List No.: 1 Sl No.: 1