

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2021

PRESENT

THE HON'BLE MR. JUSTICE ARAVIND KUMAR

AND

THE HON'BLE MR. JUSTICE N.S. SANJAY GOWDA

R.F.A.NO.859/2019

BETWEEN:

SRI. CHANDRAKANTHA SHIVARAMA SHETTY
S/O SHIVARAMA SHETTY
AGED ABOUT 58 YEARS
"KOTTARIMANE", PANGALAGUDDE
PANGALA POST - 576 122
UDUPI TALUK AND DISTRICT.

...APPELLANT

(BY SRI. SHASHI KIRAN SHETTY, SR. COUNSEL FOR
SRI. J. KIRAN, ADVOCATE)

AND:

SRI. CHANDRASHEKAR
S/O DEVAYYA NAYAK
AGED ABOUT 55 YEARS
R/AT "NITHYANANDA KRISPA"
MUDARU VILLAGE, BAJAGOLI POST
KARKALA TALUK - 574 122.

...RESPONDENT

(BY SRI. K. CHANDRANATH ARIGA, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 96 OF C.P.C.
PRAYING TO SET ASIDE THE JUDGMENT & DECREE DATED
30.08.2018 IN O.S.NO.120/2013 PASSED BY THE COURT OF
SENIOR CIVIL JUDGE & ACJM KARKALA AND PASS SUCH
OTHER ORDERS AS THIS HON'BLE COURT DEEMS FIT IN
THE INTERESTS OF JUSTICE AND EQUITY.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
ARAVIND KUMAR J, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is filed by the defendant calling in question the illegality of the judgment and decree passed by the Senior Civil Judge and ACJM, Karkala, passed in O.S.No.120/2013 dated 30.08.2018 whereunder suit filed by the respondent/plaintiff for refund of the amount received by the appellant under the agreement dated 12.12.2012 with interest @ 15% p.a. has been decreed for Rs.21,00,000/- with interest @ 7% p.a. from the date of suit till date of realization.

2. Parties to this appeal at the instance of friends and well wishers have amicably settled their dispute out of their own free will and have filed a compromise petition under Order 23 Rule 3 CPC whereunder parties have settled their dispute as per the terms and conditions agreed to thereunder. The terms as agreed to between the parties reads:

"2. The Respondent is the Plaintiff in O.S.No.120/2013 on the file of the Senior Civil Judge & ACJM., Karkala filed against the appellant for refund of the amount

received by the Appellant under an agreement of sale dated 12.12.2012 with interest.

3. The Appellant contested the suit and thereafter the suit was decreed vide Judgment and Decree dated 30-08-2018 decreeing for a sum of Rs.21,00,000/- (Rs. Twenty-One Lakhs only) with interest at 7% per annum from the date of suit till the date of realization on account of which the Appellant has instituted the present appeal.
4. Subsequent to the institution of the appeal, the Appellant and Respondent have agreed to settle their disputes as under:
 - a. The Appellant withdraws all the contentions raised in the appeal and confirms the correctness of the Judgment and Decree passed in O.S.No.120/2013 by the Senior Civil Judge & ACJM., Karkala.
 - b. The Respondent upon the aforementioned confirmation of the Judgment and Decree has agreed to receive a total amount of Rs.29,00,000/- (Rs. Twenty-Nine Lakhs only) in full and final settlement of all his claim.
 - c. The Respondent acknowledges the receipt of a sum of Rs.15,00,000/- (Rs. Fifteen Lakhs only) out of the about sum of Rs.29,00,000/- (Rs. Twenty-Nine Lakhs only).
 - d. The appellant shall pay the balance amount of Rs.14,00,000/- (Rs. Fourteen Lakhs only) on or before 30.10.2021.

- e. The failure on the part of the appellant to pay the amount of Rs.14,00,000/- (Rs. Fourteen lakhs only) within the period fixed will result in the revival of the decree in O.S.No.120/2013 and the respondent is at liberty to proceed with the Ex. Case No. 1/2019 on the file of the Senior Civil Judge & ACJM., Karkala.

3. The appellant and respondent have appeared in virtual court. Appellant has been identified by the learned counsel representing him. Respondent has appeared in virtual court from Karkala and Sri.M.K.Vijaya Kumar, learned counsel who is present in the virtual court has identified the party who is present in the virtual court. It is also stated that Sri.Vijaya Kumar has conducted the case before the trial court.

4. Parties are present in virtual court and they reiterate the contents of compromise petition filed. Appellant and respondent submit that out of their own free will and volition, without any threat, force or coercion they have affixed their signatures to the compromise petition and as such they have sought for this appeal filed by appellant/defendant being disposed of in terms of settlement arrived at. In token of having

identified the parties present in virtual court, respective learned Advocates have also affixed their signatures to the compromise petition as well as photocopies produced along with memos.

5. In view of the same, we have no impediment to accept the compromise petition. Hence, for the reasons aforesaid, we proceed to pass the following:

ORDER

- (i) Appeal stands disposed of in terms of settlement as agreed to under the compromise petition.
- (ii) Registry to draw the decree in terms of compromise petition.
- (iii) Registry of this Court is directed to refund the court fee paid on the appeal memorandum in the light of settlement having been arrived at and the amount shall be transferred to the account **No.0633101102235 of Canara Bank, NH 17 Mangalore-Udupi Road, Katapadi, Karnataka, (IFSC Code CNR B0000633-customer Id 65239931, MICR code-576015006).*

<p><i>*Corrected and deleted vide Court Order Dated 21.12.2023.</i></p>

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- (iv) Registry of trial court is directed to refund the court fee paid on the plaint to the respondent/plaintiff by issuing a cheque in the name of respondent/plaintiff on proper identification in view of settlement having been arrived at between parties.

**SD/-
JUDGE**

**SD/-
JUDGE**

DR

<p>*Deleted vide Court Order Dated 21.12.2023.</p>
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