

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 31ST DAY OF JULY, 2021

BEFORE

THE HON'BLE MR.JUSTICE S.R.KRISHNA KUMAR

CRP No.320 OF 2020(IO)

BETWEEN:

SOUTH CITY GROUP HOUSING APARTMENT
OWNERS ASSOCIATION (SUGRUHA),
FIRST FLOOR, CLUB HOUSE,
SOUTH CITY, OFF BANNERGHATTA ROAD,
BANGALORE – 560 076.
REP. BY ITS PRESIDENT K.P. KUMAR.

...PETITIONER

(BY SRI. ARUN GOVINDARAJ, ADVOCATE FOR
SRI. L. GOVINDARAJU, ADVOCATE)

AND:

1. M/S. LARSEN AND TOUBRO,
A COMPANY WITHIN THE MEANING OF SECTION 3
OF THE COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT L & T HOUSE,
NAROTTAM MORARJEE MARG,
MUMBAI – 400 038.

HAVING ITS ECC DIVISION HEADQUARTERS,
AT MOUNT POONAMALLEE ROAD,
MANAPAKKAM,
CHENNAI – 600 089.

ALSO HAVING ITS REGIONAL OFFICE AT NO.19,
1ST & 2ND FLOOR,
KUMARA KRUPA ROAD,
BANGALORE – 560 001.

REPRESENTED BY ITS ESTATE MANAGER &
POWER OF ATTORNEY HOLDER, J., NARASIMHAN.

2. DINESH P. RANKA
S/O. DEVARAJ H. RANKA,
R/A. NO.634, RANKA PARK NOS.4, 5 AND 6,

LALBAGH ROAD,
BANGALORE – 560 025.

3. SOUTH CITY MAINTENANCE COMMITTEE,
HAVING ITS OFFICES AT:
FIRST FLOOR, CLUB HOUSE,
SOUTH CITY, OFF BANNERGHATTA ROAD,
BANGALORE – 560 076.

...RESPONDENTS

(BY SRI. ANANTHARAM G.R., ADVOCATE FOR C/R1;
SRI. D.R. RAVISHANKAR FOR SRI. BHARATH K., ADV., FOR
THE IMPLEADING RESPONDENT ON I.A.1/2021)

THIS CRP IS FILED UNDER SECTION 115 OF CPC AGAINST THE ORDER DATED 17.03.2020 PASSED ON I.A.NO.63 IN O.S.NO.401/2012 ON THE FILE OF THE LXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU, DISMISSING THE I.A.NO.63 FILED UNDER SECTION 151 OF CPC R/W ORDER VII RULE 11 OF CPC.

THIS CRP COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Heard learned counsel for the parties.

2. The order dated 31.07.2021 passed in MFA No.3209/2013 reads as under:

"This appeal was directed against the impugned order dated 30.03.2013 passed on I.A.No.5 in O.S.No.401/2012 on the file of the IX Additional City Civil Judge, Bengaluru (for short "the trial Court"), whereby the trial Court allowed I.A.No.5 filed by respondent No.1-plaintiff under Order 40 Rule 1 CPC, thereby appointing a receiver in respect of the schedule immovable property.

2. The aforesaid suit in O.S.No.401/2012 was filed by respondent No.1-plaintiff for mandatory injunction and other reliefs in respect of a residential apartment complex known as "South City Complex"

situated at Kothanur Village, Bannerghatta Road, Bengaluru-76. In the said suit, while appellant was arrayed as defendant No.2, respondent No.2 herein was arrayed as defendant No.1. Defendant Nos.3 and 4 also claim to be an Association while defendant Nos.5 to 3,086 are persons said to be owning apartments in the aforesaid complex. The trial Court having allowed the aforesaid application, I.A.No.5 by the impugned order, the appellant-defendant No.2 preferred the present appeal.

3. On 31.05.2013, this Court disposed off the appeal by making the following order:

"This matter was sent to the Bangalore Mediation Centre. Before the Mediation Centre, the parties have arrived at a settlement and an Agreement has been entered into. The Agreement reads as follows:

"The aforesaid case was referred to Mediation for resolving the dispute between the parties. In the course of Mediation, the Appellant and the First Respondent have, without prejudice to any contentions of either party in any other proceedings, partly resolved their dispute and have agreed to the following terms and conditions:

- 1) Both parties agree that this settlement is restricted to the issue relating to the appointment of an Official Receiver to take over the Management and Administration of the South City Group Housing Apartment Complex, Bannerghatta Road, Bengaluru.
- 2) The Appellant and Respondent No.1 agree that the following persons who are residents of South City Group Housing Apartment Complex, Bannerghatta Road, Bangalore, and whose names have been suggested by the Appellant, shall constitute a committee, to be known as the South City Maintenance Committee.
 - (a) Sri.R. Rajagopalan, Flat No.B3-502.
 - (b) Sri. S. Banerjee, Flat No.CI-0305.

- (c) Sri. C. Vedanthan, Flat No.B1-604.
 - (d) Sri. C.N. Subramanian, Flat No.B1-1803
 - (e) Sri. K. Satyamurthy, Flat No.B1-604.
- 3) *The aforesaid South City Maintenance Committee shall be designated and appointed as the Official Receiver under Order 40 Rule 1 of the Code of Civil Procedure.*
- II. In view of the aforesaid Agreement entered into between the parties, the parties pray that the above case be disposed off in terms of the aforesaid Agreement.*
- III. Parties will appear on 31.05.2013 before the Court for passing Orders in terms of the Agreement."*
2. *learned counsel on both sides submit that the appeal may be disposed of in terms of the above Agreement in substitution of the order impugned herein. Accordingly, the appeal is disposed of in terms of the above Agreement in substitution of the order impugned herein.*
3. *Learned counsel on both sides further submit that the parties have agreed for the following arrangement till 30th June 2013.*

The 1st respondent (L & T) shall maintain the South City Complex until 30th June 2013. The committee appointed as Receiver shall collect maintenance from the residents and pay the 1st respondent, a sum of Rs.50 lakhs, on 30th June 2013. In the event of default or short payment, L&T shall deduct a sum of Rs.50 lakhs or the differential sum, from the corpus fund. The payment of Rs.50 lakhs shall be subject to drawing up of Final Accounts. L & T shall stop collecting maintenance w.e.f. 1st June 2013. L&T shall however be entitled to collect arrears of maintenance.

The above arrangement is placed on record.

4. Learned counsel on both sides submit that there are other disputes between the parties and therefore, the trial Court may be directed to refer the matter to the Bangalore Mediation Centre with Mr. T. Shivakumar as the mediator to bring about a settlement.

5. Having regard to the facts of the case, I accept the joint submission made by the learned counsel for the parties and accordingly, direct the trial Court to refer the matter to the Bangalore Mediation Centre to explore the possibility of a settlement in respect of all disputes between the parties. The Mediation Centre shall appoint Mr. T. Shivakumar as the mediator.

6. In view of disposal of the appeal, I.A.Nos.1 & 2/2013 do not survive for consideration; they stand disposed of accordingly.

Appeal disposed of."

4. A perusal of the aforesaid final order passed by this Court will indicate that a committee comprising of five receivers were appointed by this Court for the purpose of managing the affairs of the aforesaid apartment complex. However, subsequent to disposal of the present appeal, vide aforesaid order dated 31.05.2013, the suit in the trial Court continues to remain pending as on today.

5. On 15.02.2021, the Committee of receivers have submitted a letter addressed to this Court stating that they want to resign from the management of the aforesaid apartment complex. Under these circumstances, the matter was posted before this Court for the purpose of passing necessary orders on the said letter. Meanwhile, applications, I.A.Nos.1 and 2 of 2021 have been filed by certain apartment owners seeking impleadment in the present petition.

6. I have heard learned counsel for the parties and Mr. R. Rajagopalan, representing the Committee of receivers, who have submitted the aforesaid resignation letter dated 15.02.2021 to this Court.

7. All the parties have filed a Joint Memo dated 31.07.2021, which reads as under:

"At the intervention of the Hon'ble Court and after several rounds of deliberations and exchange of drafts, all the parties herein hereby consent in unison for the following:

1. All the parties herein hereby consent for appointment of Sri. A.N. Venugopal Gowda, former Judge, High Court of Karnataka to be the Administrator, in substitution of the Receiver Committee appointed earlier on 31-05-2013 for the purpose of taking over the maintenance, management and administration of the entire South City Complex and implement the said final order passed in the above appeal, in exercise of the Hon'ble Court's *parens patriae* jurisdiction in the best interest and welfare of owners of 1998 residential apartments comprised in South City, Kothanur, Uttarahalli Hobli, Bengaluru South Taluk and now lying within the jurisdiction of BBMP, Bengaluru.

2. The Administrator shall take over the management, administration and maintenance of the South City Complex from the Committee of Receivers.

3. The Administrator to take necessary steps to constitute an Association of all the apartment owners of the South City complex in accordance with the provisions of the Karnataka Apartment Ownership Act, 1972 and thereafter conduct elections for its office bearers. The Administrator shall hand over the management, administration and maintenance of the South City complex to such association constituted to enter upon the South City and take charge of the maintenance, management and administration of the entire South City Complex including collection and recovery of

monthly maintenance payable by all apartment owners / residents.

3. Upon such an Association being constituted as stated supra, it shall be entitled to receive the corpus funds with interest in deposit in the custody of the City Civil Court, Bengaluru in O.S.No.401 of 2012 with proper acknowledgement.

4. The administrator may be reserved liberty to take the assistance of all such persons whom he deems fit for the aforesaid purpose.

5. The Administrator may be requested to achieve the above tasks within a time span of 4 months from the date of he taking over the charge from the Receiver Committee.

6. The Administrator is free to fix his remuneration and other administrative expenses payable out of the monthly maintenance payable by the apartment owners.

7. The trial Court may be directed to dispose off the suit, O.S.No.401 of 2012 partly decreeing it in terms hereof.

8. The order that may made in pursuance hereof, may be, made without prejudice to the rights and contentions of all the parties and also without prejudice to and subject to any other pending litigation or dispute interse parties and/or the Receiver committee in relation to the "South City Complex".

Wherefore, the Appellant, the Respondents No.1 and 2 and the Applicant in the impleading application who is an apartment owner in South City humbly pray that the Hon'ble Court may be pleased to dispose off the above appeal in terms of this Joint memo, in the interest of justice."

8. Parties and their respective counsels are present and accepts the terms and conditions of the aforesaid Joint Memo, which is placed on record.

9. *In view of the aforesaid Joint Memo filed by all parties, all pending applications, memos and letter dated 15.02.2021 referred to supra are disposed of in terms of the said Joint Memo.*

10. *Registry is directed to forward a copy of this order to Hon'ble Justice Sri. A.N. Venugopala Gowda, former Judge of this Court forthwith.*

Ordered accordingly."

3. In view of the aforesaid order dated 31.07.2021 passed in MFA No.3209/2013, the present CRP does not survive for consideration and the same is ***disposed of.***

Consequently, the trial Court is directed to dispose of the suit in O.S.No.401/2012 in terms of the aforesaid order dated 31.07.2021 passed in MFA No.3209/2013.

Ordered accordingly.

**Sd/-
JUDGE**

Bmc / Sv