

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

DATED THIS THE 26<sup>TH</sup> DAY OF FEBRUARY 2021

BEFORE

**THE HON'BLE MR. JUSTICE E.S.INDIRESH**

**R.S.A.No.202/2019 (EVI)**

**BETWEEN :**

B.BASAVARAJ,  
S/O.LATE BASAPPA,  
AGED ABOUT 68 YEARS,  
PROPRIETOR,  
M/S.HUBLI TREASURY & CO.,  
& SIDDESHWARA CO.,  
B.H.ROAD,  
SHIMOGA CITY-577 201.  
SHIVAMOGGA.

... APPELLANT

(BY SMT.SANGEETA S., ADVOCATE FOR  
SRI.C.SHANKAR REDDY, ADVOCATE)

**AND:**

R.S.SHYAMPRASAD,  
S/O.R.S.SHANKAR,  
AGED ABOUT 70 YEARS,  
OCCUPATION: PROPRIETOR,  
OF VINAYAKA TALKIES,  
B.H.ROAD, SHIMOGA CITY AND  
RESIDING AT JAYANAGARA EXTN.,  
SHIMOGA CITY-577 201.

... RESPONDENT

(BY SRI.P.N.HARISH, ADVOCATE)

THIS REGULAR SECOND APPEAL IS FILED UNDER SECTION 100 OF CPC, AGAIST THE JUDGMENT AND DECREE DATED 26.10.2018 PASSED IN RA.NO.66/2016 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, SHIVAMOGGA, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 13.04.2016 PASSED IN OS.NO.1939/2011 ON THE FILE OF THE PRINCIPAL CIVIL JUDGE AND JMFC, SHIVAMOGGA.

THIS R.S.A. COMING ON FOR ORDERS THIS DAY, THE COURT DELIVERED THE FOLLOWING:

### **JUDGMENT**

The defendant has preferred this appeal, being aggrieved by the judgment and decree dated 26.10.2018 passed by the Principal Senior Civil Judge and CJM, Shivamogga, dismissing the appeal and confirming the judgment and decree dated 13.04.2016 passed by the Principal Civil Judge and JMFC, Shivamogga in OS.No.1939/2011.

2. The plaintiff has filed the suit against the defendant, seeking eviction of the defendant from the

suit schedule property and also seeking mesne profits. The said suit came to be decreed on 13.04.2016.

3. Being aggrieved by the judgment of the trial Court, the defendant has preferred an appeal in RA.No.66/2016 before the Principal Senior Civil Judge and CJM, Shivamogga, which came to be dismissed by confirming the judgment and decree of the trial Court. Being aggrieved by the judgment and decree of the Courts below, the defendant has preferred this Regular Second Appeal under Section 100 of CPC.

4. After notice, the respondent in this appeal entered appearance. During the pendency of this appeal, the parties to the lis have filed Compromise Petition dated 25.02.2021 under Order XXIII, Rule 3 of CPC, whereunder, it is stated that parties have amicably settled their disputes at the intervention of elders and well wishers on the terms indicated therein. It is also

stated in the compromise petition that respondent is ready to pay a sum of Rs.48,00,000/- to the appellant towards loss suffered by the appellant.

5. Terms and conditions agreed between the parties reads as under:

- 1. The Appellant has agreed to quit and deliver the vacant possession of the schedule premises Item No.A & E, to the respondent within 30 days from today i.e. on or before 25.03.2021, however the vacant possession of the Schedule Premises Item No.B and D is handed over today by the Appellant in favour of the Respondent subject to satisfaction of the conditions agreed to by both the parties.*
- 2. The Respondent has agreed to pay a sum of Rs.48,00,000/- (Rupees Forty Eight Lakhs Only) to the Appellant by way of compensation for the loss suffered by the Appellant towards shifting charges, litigation expenses, damages, etc., incurred by the*

*respondent including refund of advance, payable to the Appellant.*

- 3. The Respondent has paid the entire amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs Only) to the Appellant, both by way of cheque bearing No.759786 dated 25.02.2021, for Rs.40,00,000/- (Rupees Forty Lakhs Only), drawn on Canara Bank, Nehru Road, Shimoga, subject to realization and also an amount of Rs.8,00,000/- (Rupees Eight Lakhs only) by way of Cash, which the Appellant has acknowledged the receipts of the said amounts from the respondent. If the said cheque is bounced for any reasons, then the Appellant is entitled to restrain possession of the schedule premises until payment of the entire amount.*
- 4. The Appellant undertakes to shift all his belongings including machineries, rolling shutters, fans, tubes, etc., from the schedule premises and to deliver the vacant possession thereof to the Respondent on or before 25.03.2021, however the Respondent*

*shall fully co-operate in smooth shifting of the belongings of the Appellant and any violations of conditions thereof, shall invite penalty under Contempt of Court Act.*

- 5. It is further agreed that if the Appellant fails to deliver the vacant possession of the schedule premises referred to in the plaint schedule, even after the expiry of the aforesaid period, the Respondent is entitled to execute the compromise decree passed on the basis of this compromise and to recover the vacant possession of the schedule premises from the Appellant.*
- 6. The parties herein agree that no amount is due from the Respondent to the Appellant or vice versa except the aforesaid amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs Only) agreed to be given by the Respondent to the Appellant, however as aforesaid, the Respondent has already paid a sum of Rs.8,00,000/- (Rupees Eight Lakhs Only) to the Appellant, but the balance amount of Rs.40,00,000/- (Rupees Forty Lakhs Only)*

*agreed to be paid by way of aforesaid cheque shall be handed over to the Appellant, at the time of reporting this compromise before the Hon'ble Court.*

- 7. In view of the aforesaid settlement between the parties, the Appellant does not press for the reliefs claimed in the above appeal and the above appeal may be disposed off in the terms of this compromise petition.*
- 8. The parties shall bear their own costs. Full refund of the court fee may kindly be ordered in favour of the appellant in the above appeal.*
- 9. The contents of the compromise petition has read over to the parties and explained in Kannada language and after they understood the same have put their signatures and that both the parties hereby declare that the contents in the compromise petition are true and correct to the best of their knowledge, information and belief.*

6. Both the parties who were present before the Court, submit that after having understood the contents of the compromise petition, they have affixed their signature out of their own wish without any fear or threat. Their signatures have been identified by their respective counsel.

7. As per agreed terms, the respondent has paid Rs.40,00,000/- by way of Cheque bearing No.759786 dated 25.02.2021 drawn on Canara Bank, Nehru Road Branch, Shimoga to the appellant and Rs.8,00,000/- by way of cash. The appellant has acknowledged the receipt of the cheque as well as cash.

8. On perusal of the contents of the compromise petition, it is observed that the parties have settled the matter as per terms and conditions therein. In the light of the aforesaid undisputed facts, there is no impediment for this Court to accept the compromise petition. It would



reflect that there is no fraud or coercion or undue advantage made at the time of entering the compromise petition by the parties.

9. In that view of the matter, the compromise petition is hereby accepted. Accordingly, the Regular Second Appeal is disposed of in terms of compromise petition. Registry shall draw the decree in accordance with the compromise petition.

Leaned counsel for both the parties have signed the order sheet in consonance with the Standard Operating Procedure of this Court.

**Sd/-  
JUDGE**

SB