

**Anish M Rawther @ Anees Mohammed Rawther  
v.**

**Hafeez Ur Rahman & Ors.**

(Civil Appeal No. 4120 of 2024)

14 June 2024

**[Vikram Nath and Prashant Kumar Mishra,\* JJ.]**

**Issue for Consideration**

High Court, if justified in directing the trial court to accept the respondent's memo and pass appropriate order.

**Headnotes**

**Code of Civil Procedure, 1908 – Ord. XXXVII – Summary suits – Suit u/Ord. XXXVII by respondents against the appellants for recovery of money – Respondent filed memo requesting the trial court to decree the suit in terms of Ord. XXXVII r. 3(6)(b) – Trial court rejected the memo – However, the High Court set aside the order directing the trial court to accept the memo submitted by the respondents and pass appropriate orders – Correctness:**

**Held:** High Court did not accept the submission of the appellants that in view of s. 14 of the Insolvency and Bankruptcy Code, 2016, the moratorium became operational, thus, the suit cannot proceed, and directed the trial court to accept the memo and pass appropriate orders – This Court stayed the impugned order, however, much prior to the interim order of this Court, the suit itself was decided finally by passing a decree – It is not brought to the notice that the said decree has been challenged any further by the appellants – Thus, for the present, the suit is not pending, thus, the appeal which arose out of an interim order passed by the trial court during pendency of the suit, is rendered infructuous. [Para 5]

**List of Acts**

Code of Civil Procedure, 1908; Insolvency and Bankruptcy Code, 2016.

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\* Author

**Digital Supreme Court Reports****List of Keywords**

Memo; Summary suits; Recovery of money; Decree the suit; Moratorium; Infructuous.

**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4120 of 2024

From the Judgment and Order dated 21.03.2022 of the High Court of Karnataka at Bengaluru in WP No. 10975 of 2020

**Appearances for Parties**

U.K. Uniyal, Sr. Adv., Dinesh Kumar Garg, Abhishek Garg, Dhananjay Garg, Ishaan Tiwari, R.P. Bansal, Suresha N., Ms. Ishita Bist, Advs. for the Appellant.

Pai Amit, Ms. Pankhuri Bhardwaj, Nikhil Pahwa, Abhiyudaya Vats, Kushal Dube, Tathagata Dutta, Ms. Vanshika Dubey, Advs. for the Respondents.

**Judgment / Order of the Supreme Court****Judgment****Prashant Kumar Mishra, J.**

This appeal has been preferred by the appellant/defendant challenging the Order passed by the High Court of Karnataka on 21<sup>st</sup> March 2022 in Writ Petition No. 10975 of 2020 (GM-CPC) whereby the High Court allowed the writ petition and set aside the Order dated 07<sup>th</sup> March 2020 passed by the Trial Court in Com. OS No. 1026 of 2018 and further directed the Trial Court to accept the memo dated 14<sup>th</sup> November 2019 which was submitted by the respondents/plaintiffs and pass appropriate orders accordingly.

2. The brief facts, necessary for disposal of this Civil Appeal are that the respondents/plaintiffs preferred a suit under Order XXXVII of Code of Civil Procedure, 1908 (henceforth 'CPC') against the appellants/defendants for recovery of Rs. 1,04,16,576/- with interest. The appellants/defendants entered appearance and filed application seeking leave to defend which was allowed by the Trial Court on 19<sup>th</sup> June 2019 with a direction to the appellants/defendants to deposit 50% of the suit claim. The said order was challenged

**Anish M Rawther @ Anees Mohammed Rawther v.  
Hafeez Ur Rahman & Ors.**

before the High Court in Writ Petition No. 28349 of 2019 which was dismissed on 08<sup>th</sup> August 2019 against which an SLP (C) No. 20626 of 2019 was preferred by the appellants/defendants which came to be dismissed on 06<sup>th</sup> September 2019, by passing the following order:-

*"We are not inclined to interfere with the impugned order passed by the High Court.*

*The special leave petition, is accordingly, dismissed.*

*However, it is open for the petitioners to approach the High Court within four weeks from today for variation of the order satisfying the High Court that he can provide adequate security in terms of the orders of the High Court."*

3. Despite the above order passed by this Court, the appellants/defendants did not approach the High Court for variation of the order as permitted by this Court.
4. When the matter stood thus, the respondent/plaintiff filed memo dated 14<sup>th</sup> November 2019, requesting the Trial Court to decree the suit in terms of Order XXXVII Rule 3(6)(b) of the CPC. The Trial Court after considering the material on record, including the objections by the appellant/defendant rejected the memo vide order dated 07<sup>th</sup> March 2020. This order was assailed by the respondent/plaintiff before the High Court which has been allowed under the impugned order simultaneously directing the Trial Court to accept the memo and pass appropriate orders accordingly.
5. The appellants/defendants have argued that in view of Section 14 of the Insolvency and Bankruptcy Code, 2016 (henceforth 'IBC'), the moratorium has become operational, therefore, the suit cannot proceed. This argument was not accepted by the High Court and under the impugned order, the Trial Court was directed to accept the memo and pass appropriate orders. It is important to notice that this Court has passed an order on 01<sup>st</sup> December 2023 staying the impugned order, however, much prior to the interim order of this Court, the suit itself was decided finally by passing a decree on 20<sup>th</sup> April 2023. It is not brought to our notice that the said decree has been challenged any further by the defendants. Thus, for the present, the suit is not pending, therefore, the present appeal which arises

**Digital Supreme Court Reports**

out of an interim order passed by the Trial Court during pendency of the suit, has been rendered infructuous.

6. The Civil Appeal is, accordingly, dismissed as infructuous.

*Headnotes prepared by:* Nidhi Jain

*Result of the case:*  
Appeal dismissed.