



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF JANUARY, 2025

PRESENT

THE HON'BLE MR N. V. ANJARIA, CHIEF JUSTICE

AND

THE HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

CIVIL CONTEMPT PETITION NO. 988 OF 2024

BETWEEN:

1. KUM K LEKHANA
AGED ABOUT 16 YEARS

2. K K DRAVYA
AGED ABOUT 14 YEARS,

BOTH ARE MINORS AND
D/O B.J.KRISHNA KUMAR @ RAJU
REP. BY THEIR MOTHER AND NATURAL
GUARDIAN SMT. M.J.KAVITHA @ DIVYA
AGED ABOUT 36 YEARS
W/O SRI B.J.KIRSHNA KUMAR @
RAJU R/AT NO.173/9
KASHI VISHWANATHA LAYOUT
K.R.PURAM BANGALORE-560 036

...COMPLAINANTS

(BY SRI. VARADARAJAN M S., ADV.)

AND:

1. B J KRISHNAKUMAR @ RAJU
AGED ABOUT 48 YEARS
S/O B.P.JAYARAMA REDDY
R/A NO.393/A, 7TH CROSS
MARUTHINAGAR MADIVALA
BANGALORE-560 068

...ACCUSED

(BY SRI. AJIT P B., ADVOCATE)

Digitally signed by
MALA K N

Location: HIGH COURT
OF KARNATAKA



THIS CCC IS FILED UNDER SECTION 11 AND 12 OF CONTEMPT OF COURTS ACT, 1971, BY THE COMPLAINANT, WHEREIN PRAYS THAT THE HONBLE COURT MAY BE PLEASED TO TAKE COGNIZANCE OF THE CONTEMPT COMMITTED BY THE ACCUSED IN VIOLATING THE UNDERTAKING GIVEN BY HIM IN THE FORM OF AN AFFIDAVIT DATED 24.11.2022 FILED IN MFA NO.34/2017 AND THE ORDER OF THE SAME DATE I.E. 24.11.2022 PASSED BY THIS HONBLE COURT IN THE SAID MFA INCORPORATING THE UNDERTAKING GIVEN BY THE ACCUSED AND PUNISH THE ACCUSED APPROPRIATELY FOR THE CONTEMPT COMMITTED BY HIM.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE THE CHIEF JUSTICE MR. JUSTICE N. V. ANJARIA
AND
HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA

ORAL ORDER

(PER: HON'BLE MR JUSTICE T.G. SHIVASHANKARE GOWDA)

Complainants have filed this Contempt Petition under Sections 11 and 12 of the Contempt of Courts Act, 1971, requesting to take cognizance of the contempt committed by the accused in violating the undertaking given in the form of affidavit dated 24.11.2022 filed in M.F.A.No.34/2017 (CPC) and the consequential order dated 24.11.2022 and to punish the accused.

2. The complainants have filed the appeal in M.F.A.No.34/2017 (CPC) challenging the order passed in



O.S.No.4913/2015 dated 04.10.2016 by the LXI Additional City Civil Judge, Bengaluru, against the accused. On 31.07.2019 in the said M.F.A., the accused has filed an affidavit giving an unconditional undertaking to reserve 4th and 5th floor of the completed apartment complex with proportionate undivided share in the land i.e., suit schedule item Nos.1 and 2. In the said affidavit, accused further undertook to allot the said portion of the completed floors i.e., 4th and 5th floors in favour of the complainants in the event they succeed in the suit. Taking note of the undertaking given in the said affidavit, an order was passed on 31.07.2019. After the said order, the accused and his developer have completed the construction of the Apartment Complex consisting of 12 floors. Insofar as 4th and 5th floor of the complex, it remains to be completed.

3. It is the allegation of the complainants that, accused intentionally and deliberately acting in collusion with his developer has ensured that no work in the 4th



and 5th floor is completed. It is in utter violation of the undertaking given by the accused on 31.07.2019. They have filed I.A.No.1/2022 in M.F.A.No.34/2017 bringing to the notice of the Court about deliberate incompleteness of work in 4th and 5th floor of the Apartment Complex and on 24.11.2022, this Court has passed an order with direction. The accused in spite of such undertaking has violated the order of this Court.

4. When the matter came up for hearing, it is argued by the learned counsel for the complainants that there is a clear violation of the undertaking given by the accused before the Court in the form of an affidavit dated 31.07.2019 and also subsequent order of this Court dated 24.11.2022. The accused intentionally is keeping the 4th and 5th floor in the skeleton form whereas the apartments in the other floors have completed and this intention is to defraud the complainants and it is in violation of the undertaking and he sought for taking cognizance.



5. We have perused the order dated 31.07.2019 passed in M.F.A.No.34/2017 (CPC) as per Annexure-A wherein the application filed by the complainants seeking temporary injunction was disposed of as it may not survive for consideration. At para-3, it is observed thus:

"3. Therefore the defendants have given an undertaking that without prejudice to their rights to contest the suit, they will not sell 24921 sq.ft of the super built up area in 4th and 5th floors of the proposed buildings with proportionate undivided share in the land i.e., in items 1 and 2 of the plaint schedule properties till disposal of the Suit. They have also undertaken that in the event of plaintiffs' succeeding in the suit they are ready to allot their respective shares."

6. An additional affidavit is filed by the accused as per Annexure-C wherein para-3 reads as follows:

"3. I submit that in terms of the Joint Development Agreement, the Builder/Developer has agreed to complete the construction of the entire building, including the 4th and 5th Floor, in the Suit Schedule Item No.1 & 2 property in all respect as per the Specifications mentioned in the Joint Development Agreement and assure it to hand over our share/owners' share of built up area including the 4th



and the 5th Floor[which are directed to be reserved for the Appellants and allotted to them in case they ultimately succeed in the original suit] by end of December 2023 with a grace period of 3 months."

7. On 24.11.2022 in M.F.A.No.34/2017, another order came to be passed, which reads as follows:

"The first respondent files additional affidavit stating that the construction of the entire building including the fourth and fifth floors in suit schedule items 1 and 2 will be completed and the share of the appellants will be handed over in the built-up area by the end of December, 2023. It is also stated that the first respondent will follow up with the developer and complete the construction at the earliest including the fourth and fifth floors in the building.

In view of the undertaking given by the first respondent in the additional affidavit filed today, application I.A.1/22 does not survive and it is disposed of. If any complications arise between the parties, directions may be sought from the trial court. No directions can be given in this MFA."

8. Having regard to the undertaking given in the affidavit, 4th and 5th floors of the entire apartment complex being reserved, to be allotted to the complainants in the event of they succeed in the suit. If



any complications arise regarding incompleteness of the 4th and 5th floor building, the complainants are given liberty to approach the Trial Court and seek directions. Hence, efficacious remedy is made available to the complainants vide order dated 24.11.2022. No material is placed on record to show that the complainants have approached the Trial Court seeking any direction.

9. We do not find any reason to hold that there is any contempt, which requires consideration and we are not inclined to entertain the petition. It is accordingly disposed of.

Sd/-
(N. V. ANJARIA)
CHIEF JUSTICE

Sd/-
(T.G. SHIVASHANKARE GOWDA)
JUDGE