



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

REGULAR FIRST APPEAL NO. 946 OF 2015 (MON)

BETWEEN:

G.KUMAR,
S/O GOVINDREDDY,
AGED ABOUT 70 YEARS,
R/AT NO.80/1, 6TH B MAIN,
TATA SILK FARM,
BASAVANAGUDI,
BANGALORE - 560 028.

...APPELLANT

(BY MS. SHARAVANI P.T., ADVOCATE FOR
SRI. Y.R. SADASIVA REDDY, ADVOCATE)

AND:

1. DR. G.R.SHAMALAMMA,
D/O DR. G.N. RAMACHANDRAIAH,
AGED ABOUT 74 YEARS,
R/AT NO.672/C 24,
11TH CROSS, 7TH BLOCK,
K.R. ROAD, JAYANAGAR,
BANGALORE - 560 082.

2. D.K. RAGHAVENDRA,
S/O G.R. SHAMALAMMA,
AGED ABOUT 42 YEARS,
R/AT NO.672/C 24,
11TH CROSS, 7TH BLOCK,
K R ROAD, JAYANAGAR,
BANGALORE - 560 082.

...RESPONDENTS



(BY SRI. C.P. PUTTARAJA, ADVOCATE FOR R1 AND R2)

THIS RFA IS FILED UNDER SECTION 96 OF CPC., AGAINST THE JUDGMENT AND DECREE DATED:01.03.2012 PASSED IN O.S NO.434/2010 ON THE FILE OF THE XIX ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY (CCH.18), DECREETING THE SUIT FOR RECOVERY OF MONEY.

THIS APPEAL, COMING ON FOR FINAL HEARING, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M. NADAF)

This regular first appeal is filed under Section 96 r/w Order XLI Rules 1 and 2 of Code of Civil Procedure, 1908, by the defendant, assailing the judgment and decree dated 01.03.2012 in O.S.No.434/2010 passed by the XIX Additional City Civil and Sessions Judge, at Bangalore City (CCH-18)¹.

¹ "Trial Court" for short



2. By the impugned judgment and decree, the trial Court decreed the suit as claimed for Rs.10,59,078/- with costs and current interest thereon at the rate of 10% per annum from the date of suit till the date of realization.

3. The parties are referred to as per their ranking before the Trial Court.

4. Facts in brief to file this present appeal are as under:

5. The plaintiffs filed a suit for recovery of money for a total sum of Rs.10,59,778/- with 14% per annum.

6. The case of the plaintiffs before the trial Court was that, the plaintiffs are the owners of the property bearing No.672/C 24, 11th Cross, 7th Block, K.R.Road, Jayanagar, Bengaluru. The property was initially consisting of ground floor and a small portion at first floor. The defendant is a private Civil Engineer. The plaintiffs entrusted the job of constructing the entire first floor and



second floor area on the building standing in the site stated supra. There was no written agreement regarding the construction.

7. The defendant has commenced the construction and did the casting of the mould in the first floor and second floor and also constructed the walls and done plastering work only to an extent of 60%. Defendant has received a sum of Rs.21,15,000/- in several instalments by giving false and manipulative accounts to the plaintiffs. However, after receipt of the amount, he has slowed down the construction work. When the plaintiffs enquired regarding the delay in construction work, he has represented that he was engaged in some other work and he needs a sum of Rs.8,00,000/- urgently to complete the other project and thereafter he would swiftly complete the construction work of the plaintiffs and further assured that the said amount of Rs.8,00,000/- would be adjusted towards the construction payment of the plaintiffs' building.



8. Since the defendant is a close friend of plaintiff's son D.K.Raghavendra (plaintiff No.2) and as plaintiffs intended to get the building completed, agreed to pay a sum of Rs.8,00,000/- by way of cheque bearing No.622027 drawn on S.B.joint A/c No.20752 maintained by the plaintiff No.1, her son D.K.Raghavendra and K.G.Narayana drawn on Shamarao Vithal Co-operative Bank Limited in favour of the defendant. The defendant encashed the cheque on 25.09.2007, however, he did not shown any interest in construction of the plaintiffs' building and never bothered to resume the work. The plaintiffs after due enquiry found that the defendant had collected excess amount than the cost of construction which he had done on the building and not coming forward to complete the building, made the plaintiffs to engage another contractor and complete the construction. In this regard, the plaintiffs requested the defendant to refund the amount of Rs.8,00,000/- taken by way of cheque. Since there was denial, the present suit came to be filed in



O.S.No.434/2010 for recovery of money given along with interest.

9. Upon issuance of notice, the defendant appeared before the Court through his counsel and filed written statement, denying the plaint averments and taking contention that the suit filed by the plaintiffs is not maintainable. It was contended that the defendant being a close friend of son of the plaintiff No.1 had undertaken the construction work , but the plaintiffs are very poor masters and they used to deny the payments payable after their job is executed. When the building was in final stage, he has submitted the statement after taking entire measurements on 25.09.2008. At this stage, the plaintiffs are liable to pay a sum of Rs.2,02,000/- to the defendant, however, no payment was made on the earlier measurement done by the defendant, on the other hand the plaintiffs themselves appointed one M/s Ananth Ram Associates to conduct the re-measurement.



10. The agents of the plaintiffs conducted re-measurement on 30.10.2008 and they were of the opinion that the plaintiffs are liable to pay a sum of Rs.85,204/- to the defendant. Disappointed by the said opinion, plaintiffs engaged the service of another person by name Sri.Venkat Reddy as a Mediator. In the mediation, it was decided that the defendant should pay the plaintiffs a sum of Rs.1,50,000/- as full and final settlement of transaction between the parties. The defendant had paid the said amount through five cheques of Rs.30,000/- each. When the cheques were presented for encashment, two cheques were dishonoured, on which the plaintiffs have lodged the police complaint. On the instructions of the Circle Police Inspector, a joint measurement of work was carried out on the property by two persons, one on behalf of defendant and one on behalf of the plaintiffs. In the said measurement it was found that the plaintiffs are liable to pay a sum of Rs.4,50,890/- to the defendant. Without implementing the decision of the said persons i.e.,



Arbitrators who were appointed on 03.09.2009, the plaintiffs issued notice on defendant. As such the suit filed on a different new story is not maintainable and far from the truth, and sought to dismiss the suit.

11. The trial Court upon completion of pleadings framed the following issues:

- "1. Whether the plaintiffs prove that the defendant is due and liable to pay the suit claim of Rs.10,59,778/- as prayed for?*
- 2. Whether the plaintiffs prove that the defendant is also liable to pay the interest as claimed?*
- 3. Whether the plaintiff is entitled for a judgment and decree as sought for?*
- 4. To what order or decree?"*

12. The plaintiffs in order to prove their case examined themselves as PWs-1 and 2 and produced 9 documents and marked as Ex.P1 to 9. The defendant examined as DW-1, however, did not produce any document. The trial Court upon consideration of entire



materials placed on record answered all the issues in favour of the plaintiffs and decreed the suit.

13. The trial Court arrived at the conclusion on the basis that the plaintiffs have discharged their initial burden by means of presentation of passbook, wherein the amount paid under cheque to the defendant, however, the defendant has failed to examine any independent witness even the persons who have been appointed as Mediators i.e., Mallikarjun and Madhu nor produced any documents in support of his contentions, except his self-serving statement. In view of failure of defendant to substantiate his claim, the trial Court has held that defendant has failed to set forth his defence taken with cogent documentary and oral evidence and ultimately decreed the suit. It is this judgment and order passed by the trial Court is called in question in this appeal.

14. Heard Madam Sharvani P.T, learned counsel for Sri.Y.R.Sadasiva Reddy, learned counsel appearing for the



appellant and Sri.C.P.Puttaraja, learned counsel for respondent Nos.1 and 2.

15. The learned counsel surprisingly argued on different story than the one which has been set forth before this Court by the appellant, stating that entire construction has been completed, and only a minor work is required to be done. However, it is the plaintiffs who denied the defendant to continue the work and appointed somebody else. The amount is paid towards construction work and the same has been carried out by the defendant. Totally five cheques have been issued towards Rs.1,50,000/-, out of which two cheques when presented for encashment got dishonoured and in the proceedings under the provisions of Section 138 of Negotiable Instruments Act, 1881, a sum of Rs.60,000/- has been paid to the plaintiffs. However, to the query of this Court, the learned counsel is unable to answer as to why documents and supporting oral evidence has not been produced by the defendant to prove his contentions.



16. In view of the absence of any independent, corroborative evidence and documents, it becomes very hard for this Court to accept the contentions of the learned counsel appearing for the appellant now presented with a different story. The trial Court at paragraph No.12 has arrived at a conclusion that the defendant has miserably failed to prove his case. The said paragraph reads as under:

"12. Thus there are sufficient evidence and materials on record including the admission of the D.W-1 himself to show that the defendant has received a sum of Rs.8,00,000/- from the plaintiff on 25/9/2007 under the cheque No.622027 as claimed by the plaintiffs. Under these circumstances, the onus is shifted on the defendant to prove that either he has repaid the amount or it is adjusted towards the construction work carried out by him for the plaintiffs. But it is most pertinent to note that except his oral testimony, the D.W-1 G.Kumar has absolutely not placed any other materials or evidence before Court. As I have said above, the defendant has contended that one Mallikarjun from the defendant's side and one Madhu from the plaintiffs' side were involved in conducting the joint-measurement and after the said joint measurement, they found that the plaintiffs were liable to pay a sum of Rs.4,60,890/- to the defendant towards the construction work done by him. But in order to establish this, the defendant has not at all ventured to examine the said witnesses Mallikarjun and Madhu for the best reasons known to him. As such, except his own uncorroborated and self-serving oral testimony, there is absolutely no other evidence in support of his contentions. He has also not at all produced any documents in this regard. Thus there is absolutely no iota of evidence or documents



before Court to show that the plaintiffs were actually owed any amount to the defendant. Therefore, in the absence of any concrete evidence or materials, I do not find any reasons to believe the theory set up by the defendant or to discard the plaintiffs' case. On the other hand, there are sufficient evidence and materials by means of Ex.P1(a) and Ex.P.2 to show that the defendant had received a sum of Rs.8,00,000/- from the plaintiffs. This fact is admitted by the defendant himself. Hence, in the absence of anything to show the liability of the plaintiffs as alleged by him, I do not find any reasons to disbelieve the case of the plaintiff. Hence under all the above circumstances, I hereby come to the conclusion that the plaintiffs have categorically proved that the defendant is due and liable to pay the suit claim to them. Accordingly, I answer this issue as stated above in their favour."

17. We find no infirmities in the judgment and decree passed by the trial Court, which requires any interference at the hands of this Court. The suit is only for money recovery on the amount paid under cheque, which is also admitted by the defendant in his cross-examination. The appeal sans merit and accordingly, the same is **dismissed**.

18. It is for the appellant to take contention regarding payment of Rs.60,000/- as contended in Execution case filed for executing the decree by the



respondent, but with proper, supportive and corroborative materials.

In view of dismissal of the appeal, pending interlocutory application/s if any, does not survive for consideration and the same is/are disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

RR
List No.: 1 Sl No.: 25
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