HC-KAR

NC: 2026:KHC:61235
MFA No. 1765 of 2025

CNR: KAHC010157272025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

MISCELLANEOUS FIRST APPEAL NO.1765 OF 2025 (CPC)

BETWEEN:

1. FOOTPRINTS APARTMENT OWNERS ASSOCIATION
AN ASSOCIATION OF PERSONS
HAVING ITS OFFICE AT FOOTPRINTS
7TH CROSS, 7TH MAIN,
HAL II STAGE,
BENGALURU - 560008
PRESENTLY REPRESENTED BY
ITS PRESIDENT
MR. KAMAL SAGAR
RESIDING AT APARTMENT NO.303,
FOOTPRINTS, 7TH CROSS, 7TH MAIN,
HAL II STAGE,
BENGALURU - 560008.

...APPELLANT

(BY SRI. SRIDHAR G., ADVOCATE)

Digitally signed by VINUTHA M
Location: HIGH COURT OF KARNATAKA

AND:

1. MS. SUZAN RAHAMAN
W/O LATE MATHIN RAHAMAN,
AGED ABOUT 70 YEARS,
RESIDING AT NO.203,
FOOTPRINTS, 7TH CROSS,

7TH MAIN, HAL II STAGE,
BENGALURU - 560008.

…RESPONDENT

(BY SRI. ASHWIN K., ADVOCATE)

THIS MFA FILED U/O 43 RULE 1(r) R/W SECTION 151 OF CPC, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 30.11.2024 IN O.S.NO.26042/2024 PASSED BY THE HON'BLE XIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, MAYOHALL UNIT, BANGALORE (ANNEXURE-A) AND REJECT I.A NO.VII (ANNEXURE-F) FILED BY THE PLAINTIFF IN O.S.NO.26042/2024 ETC.

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

CORAM: HON'BLE MR. JUSTICE PRADEEP SINGH YERUR

ORAL JUDGMENT

1. Though the matter is listed for admission, with the consent of learned counsel for the parties, the matter is taken up for final disposal.

2. This appeal is preferred by the appellant, who is defendant No.4 in O.S.No.26042/2021, challenging the order dated 30.11.2024 passed by IV Additional City Civil and Sessions Judge, Mayohall unit, Bengaluru, insofar as it

relates to the application-I.A.No.VII filed by respondent No.1, who is the plaintiff in the said suit.

3. Parties shall be referred to as per their ranking before the trial court.

4. The aforesaid suit has been filed by the plaintiff against defendant No.4/the appellant and others, seeking the following reliefs:

> "(a) To declare that the Deed of Declaration dated 25th April 2014, registered as Document No.80/2014-15, in the office of the Sub-Registrar, Indiranagar, Bangalore, is null, void and non-est as per The Karnataka Apartment Ownership Act, 1972.
>
> (b) To grant a mandatory injunction directing the Defendants 1 to 3 to join with the Plaintiffs and Defendants 5 to 20 to constitute an Apartment Owners Association by executing a Deed of Declaration as per the provisions of the Karnataka Apartment Ownership Act, 1972.
>
> (c) To grant a mandatory injunction directing the Defendants Nos 2, 3 and Defendant Nos 5 to 9 to remove all obstructions in the Plaintiff's access of the common terrace and set-back areas of Apartment Building known

as Footprints and to direct the Defendants to keep the same free from obstructions and not to put up any construction or structures therein.

(d) To grant a Permanent Injunction to restrain the Defendants from preventing the Plaintiff's access to the common terrace in the Suit Schedule Property and the set-back areas,

(e) To grant costs, and

(f) To grant such other relief/s as this Hon'ble Court may deem fit to grant under the circumstances of the case, in the interest of justice and equity."

5. I.A.No.VII was filed by the plaintiff under Order 39 Rule 1 and 2 read with Section 151 of CPC seeking to restrain defendant No.4 from disconnecting common area maintenance services like security power backup, housekeeping, landscaping, elevators, health club, electricity, water bill for common areas concerning the application schedule properties. The said application was contested by defendant No.4. Upon hearing the learned counsel for the parties, the trial court has allowed I.A.No.7 filed by the plaintiff, and consequently, defendant No.4-

Association has been restrained from disconnecting common area maintenance services like security power backup, housekeeping, landscaping, elevators, health club, electricity, water supply to the plaintiff till disposal of the suit. Consequently, by a common order, I.A.No.VIII filed by defendant No.4 came to be allowed permitting defendant No.4-Association to withdraw the maintenance amount deposited by the plaintiff in the Court. The said order passed by the trial court on I.A.No.VIII is not in challenge before this Court.

6. Learned counsel for the appellant vehemently contends that the said order passed on I.A.No.VII is incomplete since it restrains defendant No.4 from disconnecting the essential services without subjecting the plaintiff to deposit the maintenance amount to defendant No.4-Association. Therefore, he contends that the trial court has committed a perversity in not subjecting the plaintiff to deposit the maintenance amount regularly as

and when required in accordance with the Rules and bye-laws of the Association.

7. Per contra, the learned counsel for the respondent vehemently contends that despite there being an order passed by the trial court without subjecting the plaintiff to deposit the maintenance amount, the plaintiff has filed an application seeking permission to deposit the maintenance amount before the trial court, and accordingly, she has been regularly depositing the maintenance amount before the trial court. In fact, the plaintiff does not have objection with regard to defendant no.4-Association withdrawing the amount from the Court regularly, which has been allowed by the trial court by way of a common order on the application-IA No.VIII filed by defendant No.4 and no appeal has been preferred against such order. It is also submitted that the plaintiff would continue to deposit the maintenance amount regularly before the trial court. Hence, he contends that the order does not call for

interference and there is no perversity or illegality committed by the trial court in passing the impugned order.

8. I have heard the learned counsel for the appellant/defendant no.4 and the respondent/plaintiff.

9. The point that arises for consideration is whether the impugned order calls for interference. If so, what order.

10. The trial court, by the impugned order, has allowed I.A.No.VII filed by the plaintiff and thereby directed defendant no.4 to not disconnect the common area maintenance services to the plaintiff in the areas mentioned in the impugned order. The short point for consideration is whether the plaintiff is required to pay the maintenance amount. Though the plaintiff has filed an application seeking permission to deposit the maintenance amount and volunteered to deposit the amount and the same is being deposited regularly, is there any requirement for modification of the order.

11. It appears that there is an *inter se* dispute between the plaintiff and defendant No.4-Association with regard to registration of the deed of declaration to be *non est* and the plaintiff has sought for a direction to defendant No.4 to constitute an Apartment Owners Association by executing a deed of declaration as per the Karnataka Apartment Ownership Act, 1972. The said aspects will have to be decided during the course of trial. In my opinion, the learned counsel for the appellant has rightly contended that though an order has been passed by the trial court allowing I.A.No.VII in favour of the plaintiff, the same cannot be a blanket order. However, the plaintiff would have to be subjected to deposit of the maintenance amount regularly. Though the plaintiff has voluntarily deposited the amount by filing an application, an order requires to be passed, and hence, a slight modification is required in the order impugned herein. Accordingly, the following:

ORDER

The appeal is partly allowed. The impugned order dated 30.11.2024 passed by IV Additional City Civil and Sessions Judge, Mayohall unit, Bengaluru on I.A.No.VII in O.S.No.26042/2021 is modified to the extent that defendant No.4-Association is hereby restrained from disconnecting common area maintenance services like security backup power, housekeeping, landscaping, elevators, health club, electricity, water supply to the rplaintiff till disposal of the suit subject to the plaintiff/respondent No.1 depositing the quarterly maintenance amount.

Further, there has been a slight error committed by the trial court, which is a typographical error at paragraph No.17 of the impugned order, which reads as "Therefore, I hold that the Plaintiff is entitled to withdraw the maintenance amount deposited by the Plaintiff to the Court" which shall be read as "Therefore, I hold that

defendant No.4 is entitled to withdraw the maintenance amount deposited by the Plaintiff to the court".

Sd/-
(PRADEEP SINGH YERUR)
JUDGE

hkh.
List No.: 1 Sl No.: 30