HC-KAR

NC: 2026:KHC:62568-DB
COMAP No. 328 of 2026

CNR: KAHC010442892026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

COMMERCIAL APPEAL NO. 328 OF 2026

BETWEEN:

C M NAGARAJA MURTHY
S/O MADAIAH,
AGED 61 YEARS,
PRESENTLY RESIDING AT 54, 5TH CROSS,
I MAIN, BIKASPURA (BDA ISRO LAYOUT)
BANASHANKARI 5TH STAGE,
BENGALURU – 560 061.

...APPELLANT

(BY SRI. ALDEN D SOUZA, ADVOCATE)

AND:

V S RAJU
S/O SRI SIDDAIAH,
AGED 47 YEARS,
PROP. R K CONSTRUCTION,
HAVING OFFICE AT NO.28,29 AND 30,
GROUND FLOOR, 7TH CROSS, GYANAJYOTHI NAGARA,
ULLALA MAIN ROAD, BENGALURU – 560 110.

...RESPONDENT

(RESPONDENT SERVED)

Digitally signed by MALA K N
Location: HIGH COURT OF KARNATAKA

THIS COMAP/COMMMERCIAL APPEAL FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 10.06.2026 IN COMMERCIAL O.S.NO.230/2025 (ANNEXURE A) PENDING BEFORE THE HON'BLE XI ADDITIONAL DISTRICT AND SESSIONS JUDGE (COMMERCIAL COURT), BENGALURU RURAL DISTRICT, BENGALURU.

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

CNR: KAHC010442892026

CORAM: HON'BLE MR. JUSTICE D K SINGH
AND
HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.SHANTHI BHUSHAN)

This Commercial Appeal is filed by the defendant challenging the Judgment and Decree dated 10.06.2026 passed by the XI Additional District and Sessions Judge, (Dedicated Commercial Court), Bengaluru Rural District, Bengaluru (**'Commercial Court'**) in Commercial O.S.No.230/2025, whereby the review petition filed under Order XLVII Rule 1 read with Section 114 of the Code of Civil Procedure, by the defendant came to be allowed, modifying the order dated 02.05.2026 passed on I.A. filed under Order XXXIX Rule 1 and 2 of CPC.

2. For the sake of convenience, and to avoid any confusion, the parties are referred to herein by their respective rankings before the Commercial Court.

(i) Facts of the plaintiff:

3. The plaintiff, who is the proprietor of M/s.R.K.Constructions, instituted Com.O.S.No.230/2025

against the defendant seeking recovery of a sum of Rs.9,15,290/- together with interest at 12% per annum, alleging that the said amount was due towards the construction work undertaken by him in the defendant's residential building bearing site No.229, situated at Sir M.Visveshwaraiah Layout, 9th Block, Bengaluru (***'suit schedule property***'). According to the plaintiff, he was engaged by the defendant to execute certain construction works and, despite having carried out the work, the defendant failed to pay the entire amount due.

4. The plaintiff contended that the defendant was attempting to proceed with the construction by engaging another contractor without settling his claim and that such action would prejudice his interest and affect his ability to recover the amount due. Along with the suit, the plaintiff filed I.A. No.1 under Order XXXIX Rules 1 and 2 of CPC, seeking an order of temporary injunction restraining the defendant, his men, agents or anybody claiming under him from engaging the services of any other contractor to construct the residential building over the suit schedule property during the pendency of the suit.

(ii) Defence of the defendant:

5. The defendant resisted the suit as well as I.A.No.1, contending that the plaintiff had been engaged only for carrying out specified portions of the construction under an oral arrangement for a fixed consideration of Rs.9,50,000/-. It was his specific case that the agreed amount had already been paid through cheques dated 01.05.2024, 16.09.2024 and 25.09.2024, together with cash payment, and that the plaintiff was subsequently raising an unjustified claim by relying upon inflated invoices.

6. The defendant disputed the quality and nature of the work executed by the plaintiff and asserted that the construction suffered from defects. He further contended that the suit was essentially one for recovery of money and that there was no justification for preventing him, being the owner of the suit schedule property, from completing the construction of his own residential building through another contractor.

7. It was also contended that continuation of the injunction would cause serious prejudice to him, whereas the plaintiff's alleged monetary claim could be adjudicated in the

suit itself. On these grounds, the defendant sought dismissal of I.A. No.1.

(iii) <u>ORDER DATED 02.05.2026 ON I.A. NO.1 UNDER ORDER XXXIX RULE 1 & 2 OF CPC:</u>

8. The Commercial Court, after considering the pleadings and objections filed by the defendant and hearing the parties, by order dated 02.05.2026, allowed I.A.No.1 filed by the plaintiff under Order XXXIX Rule 1 and 2 of CPC. The Court proceeded on the premise that the plaintiff had undertaken construction work in the suit schedule property and that, if the defendant was permitted to engage another contractor and proceed with the construction, the plaintiff would be left without an effective means of protecting his interest in respect of the amount claimed. Accordingly, the Court granted the temporary injunction restraining the defendant from engaging the services of any other contractor to complete the residential building pending disposal of the suit.

9. The operative portion of the order dated 02.05.2026 reads as follows:

> *"IA No.1 filed by the plaintiff under Order 39 Rules 1 and 2 CPC seeking an order of temporary injunction*

restraining the defendant, his men, agents or anybody claiming under him from engaging the services of any other contractor to construct the residential building over the suit schedule property pending disposal of the suit is allowed.

By way of temporary injunction, the defendant, his men, agents or anybody claiming under him are hereby restrained from engaging the services of any other contractor to construct the residential building over the suit schedule property pending disposal of the suit."

Aggrieved by the order dated 02.05.2026, the defendant filed an application dated 01.06.2026 under Order XLVII Rule 1 read with Section 114 of CPC, seeking review of the said order.

(iv) Review application filed by the defendant:

10. The defendant contended that the order proceeded on an erroneous factual premise, particularly in describing the plaintiff as the owner of the suit schedule property, whereas the defendant himself was the owner. It was further contended that the suit was one for recovery of an alleged monetary claim of Rs.9,15,290/- and that there was no justification for

restraining the owner from proceeding with the construction of his residential building.

11. The defendant also relied upon photographs produced along with the review application to demonstrate the damage likely to be caused to the building if the construction was not completed. He therefore sought reconsideration of the injunction order and appropriate modification thereof.

12. The plaintiff filed objections dated 04.06.2026 opposing the review application. The plaintiff contended that the review application was not maintainable, that the defendant was attempting to reopen the matter as though in an appeal and that no error apparent on the face of the record or any other ground recognized under Order XLVII Rule 1 CPC had been made out. The plaintiff accordingly sought dismissal of the review application.

(v) Order dated 10.06.2026 in the review petition:

13. The Commercial Court, by order dated 10.06.2026, allowed the review application filed by the defendant under Order XLVII Rule 1 read with Section 114 of CPC and modified

its earlier order dated 02.05.2026. The Court directed certain corrections in paragraph No.11 of the earlier order by substituting the descriptions of the plaintiff and defendant and added paragraph No.16.

14. More importantly, taking note of the photographs produced by the defendant and the prima facie damage likely to be caused to the building under construction, the Commercial Court held that, instead of restraining the defendant, being the owner of the suit schedule property, from proceeding with the construction, directing him to furnish security by way of a bank guarantee for the plaintiff's suit claim would meet the ends of justice.

15. The relevant operative portion of the review order dated 10.06.2026 reads as follows:

> *"Review Petition filed by the defendant under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure is hereby allowed.*
>
> *Order dated 02.05.2026 passed on IA, under Order 39 Rules 1 and 2 by the plaintiff is hereby modified as under:*
>
> *At para No.11, second line, the word plaintiff has to be substituted by the word defendant. At line No.3 the*

word defendant has to be substituted by the word plaintiff. At line No.5, word defendant has to be substituted by the word plaintiff.

Para No.16 to be added as under:

In view of the photographs produced by the defendant to establish a prima facie damage that would be caused to the building under construction in the suit schedule property, instead of restraining defendant or owner of the suit schedule property from proceeding with the completion of the construction work, directing the defendant to furnish bank guarantee for the suit claim of the plaintiff to the tune of Rs.10 lakhs renewable until disposal of the suit would meet the ends of justice.

Operative portion of the order under review to be as follows:

Defendant is directed to furnish bank guarantee to the tune of Rs.10 Lakhs renewable until disposal of the suit towards suit claim of the plaintiff."

Thus, the earlier restraint against the defendant from engaging another contractor was removed and substituted by a direction to furnish a bank guarantee of Rs.10,00,000/-, renewable until disposal of the suit.

16. Aggrieved by the order dated 10.06.2026, the defendant has preferred the present commercial appeal under

Section 13(1A) of the Commercial Courts Act, 2015, contending that the Commercial Court, having allowed the review application and removed the restraint on construction, could not have imposed an independent condition directing him to furnish a bank guarantee of Rs.10,00,000/- without recording proper reasons.

(vi) Grounds urged in the commercial appeal:

17. It is urged that the direction is arbitrary and beyond the scope of the original application under Order XXXIX Rules 1 and 2 CPC, particularly when the suit is essentially for recovery of money and the plaintiff has not sought any such relief. The defendant further contends that there is no material to indicate that he has attempted to alienate the suit schedule property, defeat any decree that may ultimately be passed, or otherwise obstruct the recovery of the plaintiff's alleged dues. On the contrary, he has appeared before the Court, filed his written statement and contested the claim.

18. It is also contended that the direction to furnish a bank guarantee operates in the nature of an attachment before

judgment, without satisfying the requirements of Order XXXVIII Rule 5 CPC. The Commercial Court, according to the defendant, has not recorded any finding regarding the existence of a prima facie case, balance of convenience or irreparable injury warranting such a condition. The defendant, therefore, contends that the impugned order suffers from non-application of mind, imposes an unreasonable financial burden upon him and is liable to be set aside.

19. We have heard Sri.Alden D'Souza, learned counsel appearing for the appellant/defendant. Upon consideration of the pleadings, the records placed before this Court and the submissions advanced on behalf of the appellant, the following point arises for our consideration:

> *Whether the defendant has made out any ground warranting interference with the Judgment and Decree dated 10.06.2026 passed by the XI Additional District and Sessions Judge, (Dedicated Commercial Court), Bengaluru Rural District, Bengaluru in Commercial O.S.No.230/2025?*

(vii) Reasons and Analysis:

20. The principal question that arises for our consideration is, whether the Commercial Court was justified in

modifying its earlier order dated 02.05.2026 by directing the defendant to furnish a bank guarantee of Rs.10,00,000/-, instead of continuing the restraint on construction of the residential building. In considering this question, the subsequent order dated 10.06.2026 cannot be read in isolation. The nature of the suit, the relief sought by the plaintiff and the prejudice likely to be caused to either party were all relevant considerations.

21. The plaintiff's claim in Com.O.S.No.230/2025 is for recovery of Rs.9,15,290/- with interest. The defendant, on the other hand, is the owner of the suit schedule property and has asserted that he has already paid Rs.9,50,000/- towards the agreed construction work. These rival claims are yet to be established at trial. In such circumstances, the Commercial Court was justified in reconsidering the earlier restraint, particularly when continuation of the injunction would prevent the defendant from completing his residential building during the pendency of a suit which is essentially for recovery of money.

22. It is true that the power of review under Order XLVII Rule 1 read with Section 114 CPC is limited. A review cannot be converted into an appeal, nor can a Court reconsider the entire matter merely because another view is possible. However, the present case has to be examined in the light of the material placed before the Commercial Court by the defendant. The photographs produced along with the review application were taken into consideration to assess the likely damage to the building under construction if the work was not permitted to proceed.

23. The earlier order had the effect of restraining the owner from engaging another contractor and completing the building. The Commercial Court, upon noticing the factual position and the consequences of continuing such restraint, modified its earlier order. The correction of the description of the parties and the consideration of the photographs were also noticed in the review order. Therefore, the modification cannot be treated as an exercise undertaken merely to substitute one possible view for another. The Court sought to balance the competing interests of the parties.

24. There is yet another aspect which assumes significance. Order XXXIX Rule 2(2) CPC expressly empowers the Court to grant an injunction subject to such terms as regards duration, keeping of accounts, furnishing of security or otherwise, as it considers appropriate. Therefore, the contention that the Commercial Court had no authority to impose a condition of furnishing security cannot be accepted.

25. The direction to furnish a bank guarantee has to be considered in the context in which it was issued. The Court did not direct attachment of the defendant's property, nor did it prevent him from proceeding with the construction. On the contrary, the earlier restraint was removed and the defendant was permitted to complete the building, subject to furnishing security for the claim made in the suit. The distinction between an order directing security under Order XXXIX Rule 2(2) and an attachment before judgment under Order XXXVIII Rule 5 CPC cannot be overlooked.

26. The latter provision operates in a different field and its requirements cannot be mechanically imported into an order passed while regulating temporary injunctive relief. The amount

of Rs.10,00,000/- directed to be secured is also broadly referable to the plaintiff's claim of Rs.9,15,290/-. In these circumstances, the direction cannot be characterised as wholly without jurisdiction.

27. The principles governing interference by an appellate Court with an order relating to temporary injunction are equally well settled. In the present case, the Commercial Court has removed the restraint which was preventing the defendant from completing construction and has imposed a condition of security to protect the plaintiff's monetary claim. Merely because the defendant considers the condition onerous or would prefer that no security be furnished, that by itself is not a ground to interfere with the order. The impugned order dated 10.06.2026 reflects an attempt to protect the interests of both parties without bringing the construction activity to a standstill.

28. The impugned order has been passed in the interest of both parties, balancing their respective rights and equities, and to secure the ends of justice. No grounds are made out warranting interference by this Court.

29. This Court does not find any perversity or such patent illegality in the exercise of discretion as would warrant interference in the present appeal. The grounds urged by the defendant, therefore, do not make out a case for setting aside the impugned order. Therefore, the appeal is liable to be dismissed. Accordingly, the following;

ORDER

(i) The Commercial appeal is ***dismissed.***

(ii) The Judgment and Decree dated 10.06.2026 passed by the XI Additional District and Sessions Judge, (Dedicated Commercial Court), Bengaluru Rural District, Bengaluru, in Commercial O.S.No.230/2025, is hereby affirmed.

No order as to costs.

Sd/-
(D K SINGH)
JUDGE

Sd/-
(H.SHANTHI BHUSHAN)
JUDGE

KNM
List No.: 1 Sl No.: 22