HC-KAR

NC: 2026:KHC:16469
WP No. 30157 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION No. 30157 OF 2024 (GM-CPC)

BETWEEN:

1. INDIABULLS COMMERCIAL CREDIT LIMITED
A COMPANY UNDER THE COMPANIES ACT 1956 HAVING
ITS REGISTERED OFFICE AT
5TH FLOOR, BUILDING No.27,
KG MARG, CONNAUGHT PLACE,
NEW DELHI - 110001
ALSO AT
1ST FLOOR, BIKANER PINNACLE,
RHENIUS STREET,
RICHMOND ROAD,
BANGALORE - 560025
REPRESENTED BY ITS
AUTHORISED SIGNATORY
MR. ABDUL JAMEEL R. V.,

...PETITIONER

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

(BY SMT. PRUTHA BHARATHI, ADVOCATE)

AND:

1. EMBASSY HEIGHTS UNIT OWNERS ASSOCIATION
(AN ASSOCIATION REGISTERED
UNDER THE KARNATAKA SOCIETIES
REGISTRATION ACT 1960),
No.13, MAGRATH ROAD,
CORPORATION DIVISION,
No.61, BENGALURU - 560025,
REPRESENTED BY ITS PRESIDENT
MR. JAIKISHEN VIRWANI.

2. MR. K. M. VISHWANATH,
S/O LATE MR. RUDRAIAH,
AGED ABOUT 57 YEARS

KMP HOUSE, No.12/2,
4TH FLOOR, YAMUNA BHAI ROAD,
MADHAV NAGAR,
BENGALURU - 560001.

3. D. J. MATRIX CONSULTING PVT. LTD.,
HAVING THEIR OFFICE AT C -133,
SOBHA MANGOLIA,
BANNERGHATTA ROAD,
BENGALURU - 560029,
REPRESENTED BY ITS DIRECTOR
DR. JOSEPH K. THOMAS.

…RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE IMPUGNED ORDER DATED 22.06.2024 PASSED BY THE LXXXVI ADDL. CITY CIVIL AND SESSION JUDGE COMMERCIAL COURT BENGALURU CCH-87 IN COMMERCIAL SUIT BEARING No.1772/2022 EMBASSY HEIGHTS UNIT OWNERS ASSOCIATION V KM VISHWANATH ANNEXURE-A AS ILLEGAL.

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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

Heard Smt. Prutha Bharathi, learned counsel for the petitioner.

2. Respondent No.1 herein filed Com.O.S. No.1772/2022 against respondent No.2 for recovery of maintenance dues in respect of the unit owned by him. It is the case of the petitioner that the said unit had been secured in its favour and that proceedings were initiated for recovery of the loan

amount. It is submitted that the unit was sold in an auction, and respondent No.3 herein is the successful purchaser of the said unit. It is further stated that, though the Commercial Court directed deposit of the surplus amount after adjustment of the liability towards maintenance as claimed by respondent No.1, no surplus amount was realised.

2.1 In the meantime, an application to implead the petitioner and respondent No.3 was allowed by the Court. The plaintiff/respondent No.1 has also filed an application for amendment incorporating subsequent developments.

3. Learned counsel for the petitioner submits that the petitioner is only a secured creditor and has enforced recovery under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act"). It is contended that the property/unit in question has been sold in favour of respondent No.3 in an auction and that the necessary deeds have been executed. It is further submitted that, respondent No.3 being the present owner of the unit in question, the petitioner is not a necessary party to the proceedings.

3.1 It is also contended that the trial Court has committed an error in allowing the amendment. Learned counsel submits that the prayer sought to be introduced by way of amendment constitutes a new cause of action, and therefore, the amendment as permitted is unsustainable.

4. Considered the submissions made by learned counsel for the petitioner.

5. Respondent No.2 is the owner of a unit in the commercial building known as *Embassy Heights*. Respondent No.1 is the Association of Owners formed for the maintenance of the said building. Respondent No.2, being the owner of one of the units, has defaulted in payment of maintenance charges. To recover the said dues, Com.O.S. No.1772/2022 has been instituted.

5.1 In the meantime, the petitioner, being a secured creditor, initiated proceedings under the SARFAESI Act and sold the unit in a public auction, wherein respondent No.3 emerged as the successful purchaser. It is stated that a sale deed has been executed by the petitioner in favour of respondent No.3. It is the stand of the petitioner that, as respondent No.3 has

stepped into the shoes of respondent No.2 as the owner, the petitioner, being only a secured creditor, and no claims can be maintained against it.

6. In the amendment application, a specific averment is made that the sale was conducted on an "as is where is", "as is what is" and "whatever there is" basis. It is further averred that, prior to the auction, the petitioner had knowledge of the pending claims towards maintenance. The sale deed executed by the petitioner in favour of respondent No.3 has not been placed before the Court. Unless the petitioner demonstrates that the dues pertaining to the unit sold were duly disclosed to and fastened upon the auction purchaser, the amendment allowed cannot be faulted. As on the date, the petitioner is also impleaded in the suit.

7. The recitals in the agreement executed by the petitioner in favour of respondent No.3, the successful auction purchaser, would be relevant for adjudication of the suit. The amendments sought are necessitated in view of the subsequent developments that have taken place during the pendency of the

suit. The amendment allowed does not, by itself, create any liability on the petitioner.

8. The trial Court has recorded that the auction purchaser (defendant No.2) has specifically contended that the Bank (defendant No.3), namely the petitioner herein, had concealed the outstanding maintenance claims and had brought the suit schedule property to sale in the public auction. The auction purchaser has further alleged that the petitioner, by suppressing such claims, has illegally executed the sale certificate in his favour. By virtue of the proceedings under the SARFAESI Act, the petitioner has stepped into the shoes of the borrower and executed the sale deed.

9. Unless the petitioner establishes that the existence of the maintenance dues was disclosed to the auction purchaser, the amendment allowed by the trial Court is justified. This Court finds no infirmity or error in the order passed by the trial Court. Accordingly, the writ petition is ***dismissed***.

Sd/-
(K. V. ARAVIND)
JUDGE

MV/List No.: 1 Sl No.: 5