HC-KAR

NC: 2026:KHC:5791
WP No. 28202 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 28202 OF 2025 (GM-CPC)

BETWEEN:

M/S PADMAVATHI ENTERPRISES
A SOLE PROPRIETORSHIP,
NO.522 (OLD NO.95)
EPIP ZONE, INDUSTRIAL AREA PHASE II,
REPRESENTED BY ITS PROPRIETOR,
SRI T. PRASAD RAO,
R/AT FLAT NO.305,
SRI SUNSHINE GREEN GLEN LAYOUT,
BELLANDURU,
BENGALURU – 560 103

…PETITIONER

(BY SRI. BADRI VISHAL, ADVOCATE)

AND:

1. M/S G PULLA REDDY SWEETS
   A PARTNERSHIP FIRM,
   DOSS CAPITA NO.126,
   11TH MAIN, 33RD CROSS,
   4TH BLOCK JAYANAGAR,
   BANGALORE – 560 011
   REPRESENTED BY ITS PARTNER
   SRI PALAGIRI VEDAVYAS REDDY

2. SRI. PALAGIRI VEDAVYAS REDDY
   S/O PALAGIRI SUBHA REDDY
   AGED ABOUT 47 YEARS
   R/AT HOUSE NO.10-2-289/21
   SHANTI NAGAR,
   HYDERABAD – 500 028

3. M/S ESTAA SWEETS
   A PARTNERSHIP FIRM,
   VYDEHI CIRCLE, ITPL MAIN ROAD
   EPIZ ZONE, WHITEFIELD
   BENGALURU – 560 066

Digitally signed by MADHURI S
Location: High Court of Karnataka

REPRESENTED BY ITS PROPRIETOR
SRI T. PRASAD RAO

...RESPONDENTS

(BY SRI. RANJAN KUMAR K., ADVOCATE FOR R1 & R2;
SRI. SRINANDAN K., ADVOCATE FOR R3)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD. 02.09.2025 PASSED IN COM OS NO. 81 OF 2019 BY HONORABLE LXXXII ADDL CITY CIVIL AND SESSIONS JUDGE COMMERCIAL COURT (CCH-83) DISMISSING THE I.A. NO. 16 AND 17 FILED BY THE PETITIONER/ DEFENDANT NO.1 UNDER ORDER XVIII RULE 17 AND SEC 151, RECALL THE WITNESS PW1 FOR FURTHER CROSS-EXAMINATION AND RECALL THE ORDER DTD. 20.06.2025 AT ANNX-A AND ETC.,

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

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the 1st defendant in Com.O.S.No.81/2019 is directed against the impugned order dated 02.09.2025, whereby the applications I.A.Nos.16 and 17 filed by the petitioner to reopen the case and to recall PW-1 for further cross-examination were rejected by the commercial court.

2. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that in the aforesaid suit filed by the plaintiff against defendants, the plaintiff examined PW-1 and was partly cross-examined by the petitioner and when the matter was posted for further cross-examination on 13.02.2025, the petitioner could not further cross-examine PW-1 on that day, as a result of which, the same was taken as 'closed', subsequent to which, the petitioner filed the instant applications seeking re-opening of the case and for permission to further cross-examine PW-1 which was declined by the commercial court by passing the impugned order, which is assailed in the present petition. In this context, the commercial court failed to consider and appreciate that in the memorandum of facts filed by the learned counsel appearing on behalf of petitioner – 1st defendant, in support of I.A.Nos.16 and 17, valid and sufficient grounds had been urged and made out by the petitioner which has not been correctly or properly considered or appreciated by the commercial court as can be seen from the same, which are extracted as hereunder:-

MEMORANDUM OF FACTS

" I, Badri Vishal. Advocate having office at 47/1, town house - A. 6th cross Road, Lavelle Road, behind Navint

motors, Bengaluru-560001 do hereby solemnly affirm and state as follows:-

1. I state that I am one of the Advocate for Defendant No 1 in the said matter as such I am fully conversant with the facts of the case and I am able to depose to this Memorandum of facts.

2. I state that the Plaintiff has instituted the present suit seeking a judgment and decree against Defendant Nos. 1 and 2, jointly and severally, for payment of a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) towards damages alleged to have been suffered by the Plaintiff on account of the Defendants breach of the agreement dated 05.01.2016, together with interest thereon at the rate of 24% per annum from October 2018 till the date of realization, and further seeking a decree of permanent injunction restraining the Defendants, their men, agents, servants, or any other persons acting on their behalf from in any manner interfering with the rights and interests of the Plaintiff.

3. I state that the above matter was listed for further cross-examination of the Plaintiff's witness (PW-1) on 13.02.2025. Owing to my unavoidable personal travel outside the station on the said date, I was unable to attend the proceedings. In order to ensure that the matter proceeded without delay, I had made arrangements for a colleague-who had recently joined my office-to appear and conduct the cross-examination on my behalf. However, when the matter was taken up, the Hon'ble Court was pleased to observe that my colleague's name did not appear on the

Vakalathnama on record, and consequently, the Court declined to permit him to conduct the cross-examination. In view of the said position, and despite my bona fide efforts to ensure representation, the Hon'ble Court was constrained to record the further cross-examination of PW-1 as 'nil and thereafter posted the matter for Defendant's evidence on 03.07.2025.

4. I state that the inability to conduct cross-examination was neither deliberate nor due to negligence, but arose from circumstances beyond control and purely on technical grounds. The same constitutes a just and sufficient cause, and it is therefore prayed that the said order be recalled and an opportunity for cross-examination be granted in the interest of justice and fair adjudication.

5. I state that as Cross-examination of PW-1 is very necessary to check the veracity of the Evidence produced by Plaintiff in the captioned matter. It is just and necessary to recall the order dated 20.06.2025 so as to provide an opportunity to Cross-examine PW-1 in the above matter for the proper adjudication of the matter. I state that there are no malafides in filing this Application and this Hon'ble Court be pleased to recall the order dated 20.06.2025 of posting the case for further Evidence of Plaintiff. Hence, this Application.

6. I state that the Defendant No.1 has always been diligent in conducting the case and has even partly cross examined PW-1, In furtherance of the same and in order to facilitate the Defendant No.1 to defend his case fully an

opportunity has to be given to the Defendant No.1 to cross examine PW-1 and the same may be done by recalling witness Pw-1 for cross examination.

6. I state that my absence is bonafide and there is no malafide intention behind the same. I state that the Defendant would abide by all the directions issued by this Hon'ble Court.

7. I state that no harm, loss or injury would be caused to the Plaintiff if the accompanying application is allowed per contra grave loss, harm and injury would be caused to the Defendant if the same is not allowed.

WHEREFORE, I pray that this Hon'ble Court may kindly be pleased to allow the accompanying Application by recalling its order dated 20.06.2025 and grant such other and further relief/s as are just in the interest of just and equity."

MEMORANDUM OF FACTS

" I, Badri Vishal. Advocate having office at 47/1, town house - A. 6th cross Road, Lavelle Road, behind Navint motors, Bengaluru-560001 do hereby solemnly affirm and state as follows:-

1. I state that I am one of the Advocate for Defendant No 1 in the said matter as such I am fully conversant with the facts of the case and I am able to depose to this Memorandum of facts.

2. I state that the Plaintiff has instituted the present suit seeking a judgment and decree against Defendant Nos. 1 and 2, jointly and severally, for payment of a sum of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs only) towards damages alleged to have been suffered by the Plaintiff on account of the Defendants breach of the agreement dated 05.01.2016, together with interest thereon at the rate of 24% per annum from October 2018 till the date of realization, and further seeking a decree of permanent injunction restraining the Defendants, their men, agents, servants, or any other persons acting on their behalf from in any manner interfering with the rights and interests of the Plaintiff.

3. I state that the above matter was listed for further cross-examination of the Plaintiff's witness (PW-1) on 13.02.2025. Owing to my unavoidable personal travel outside the station on the said date, I was unable to attend the proceedings. In order to ensure that the matter proceeded without delay, I had made arrangements for a colleague-who had recently joined my office-to appear and conduct the cross-examination on my behalf. However, when the matter was taken up, the Hon'ble Court was pleased to observe that my colleague's name did not appear on the Vakalathnama on record, and consequently, the Court declined to permit him to conduct the cross-examination. In view of the said position, and despite my bona fide efforts to ensure representation, the Hon'ble Court was constrained to record the further cross-examination of PW-1 as 'nil and thereafter posted the matter for Defendant's evidence on 03.07.2025.

4. I state that the inability to conduct cross-examination was neither deliberate nor due to negligence, but arose from circumstances beyond control and purely on technical grounds. The same constitutes a just and sufficient cause, and it is therefore prayed that the said order be recalled and an opportunity for cross-examination be granted in the interest of justice and fair adjudication.

5. I state that as Cross-examination of PW-1 is very necessary to check the veracity of the Evidence produced by Plaintiff in the captioned matter. It is just and necessary to recall the order dated 20.06.2025 so as to provide an opportunity to Cross-examine PW-1 in the above matter for the proper adjudication of the matter. I state that there are no malafides in filing this Application and this Hon'ble Court be pleased to recall the order dated 20.06.2025 of posting the case for further Evidence of Plaintiff. Hence, this Application.

6. I state that the Defendant No.1 has always been diligent in conducting the case and has even partly cross examined PW-1, In furtherance of the same and in order to facilitate the Defendant No.1 to defend his case fully an opportunity has to be given to the Defendant No.1 to cross examine PW-1 and the same may be done by recalling witness Pw-1 for cross examination.

7. I state that for the bonafide reason stated above Pw-1could not be Cross examined on the previous date and the same is not deliberate and unintentional.

8. I state that no prejudice or injury would be caused to the plaintiffs if the accompanying application is allowed. On the contrary the Defendant No.1 would be put to severe hardship and injury if Pw-1 is not recalled for cross examination.

9. I state that the Defendant No.1 would comply with all the reasonable directions which this Honourable Court may impose in order to grant an opportunity to the Defendant No. 7 to cross examine Pw-1 by recalling the said witness.

WHEREFORE, I pray that this Hon'ble Court may kindly be pleased to allow the accompanying Application by recalling its order dated 20.06.2025 and grant such other and further relief/s as are just in the interest of just and equity."

4. A perusal of the impugned order will indicate that the commercial court has adopted a hyper technical approach in refusing to provide one more opportunity to the petitioner to further cross-examine PW-1 without appreciating that the inability and omission on the part of petitioner to further cross-examine PW-1 was due to bonafide reasons, unavoidable circumstances and sufficient cause. Under these circumstances, I am of the considered opinion that in order to provide one more opportunity to the petitioner to further cross-examine PW-1, it would be just and

appropriate to set aside the impugned order and allow I.A.Nos.16 and 17 and permit the petitioner to further cross-examine PW-1 by issuing certain directions in this regard.

5. In the result, I pass the following:-

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order dated 02.09.2025 passed by the commercial court in Com.O.S.No.81/2019 is hereby set aside.

(iii) The applications I.A.No.16 and 17 filed by the petitioner are hereby allowed and the petitioner is permitted to further cross-examine PW-1 on a date to be fixed by the commercial court without seeking unnecessary adjournment under any circumstances whatsoever.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

SRL
List No.: 1 Sl No.: 42