



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 30905 OF 2025 (GM-CPC)

BETWEEN:

M/S. MOHAM CAPITAL PRIVATE LIMITED
REGD. OFFICE AT NO. 10,
5TH CROSS, 16TH MAIN,
KSRTC LAYOUT,
J.P. NAGAR, 2ND PHASE,
BANGALORE-560 078,
REPRESENTED BY ITS
FINANCE MANAGER
SRI. KASHI SRINIVASA RAO NIKIKETAN

...PETITIONER

(BY SRI.VIVEK S.REDDY, SENIOR COUNSEL FOR
SRI.SUBBA REDDY K.N., ADVOCATE)

AND:

1. M/S. DIAL LEGAL INDIA PRIVATE LIMITED
REGISTERED OFFICE AT NO. 33,
1ST FLOOR, VAISHNAVI COMPLEX,
ABOVE SOWJANYA MEDICAL,
KADIRENAHALLI CIRCLE,
BANGALORE-560 070,
REPRESENTED BY ITS DIRECTOR,
MS. SHILPASHRI THIMMEGOWDA,
D/O. THIMMEGOWDA

2. SRI. R. LINGARAJU
S/O. SRI. RAMU. M,
AGED ABOUT 48 YEARS,
MANAGING DIRECTOR,
M/S. DIAL LEGAL INDIA PRIVATE LIMITED,





NC: 2026:KHC:27739
WP No. 30905 of 2025

VAISHNAVI COMPLEX,
ABOVE SOWJANYA MEDICAL,
KADIRENAHALLI CIRCLE,
BANGALORE-560 070

3. MS. SHILPASHRI THIMMEGOWDA
D/O. THIMMEGOWDA,
AGED ABOUT MAJOR,
DIRECTOR,
M/S. DIAL LEGAL INDIA PRIVATE LIMITED,
NO.3, NAGENDRA BLOCK,
BSK 2ND STAGE,
BANGALORE-560 070

4. M/S. HDB FINANCIAL SERVICES LIMITED
3RD AND 4TH FLOOR,
HEMALATHA MANSION,
7-1-397/111 AND 112,
SR NAGAR,
HYDERABAD-500 038
REPRESENTED BY ITS BRANCH HEAD.

...RESPONDENTS

(BY SRI.D.R.RAVISHANKAR, SENIOR COUNSEL FOR
SRI.RAVINDRA PRASAD B., ADVOCATE FOR R1 TO R3
SRI.B.C.AVINASH, ADVOCATE FOR R4)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE
ORDER DATED:10.10.2025 PASSED BY THE LEARNED CCH-90
LXXXIX ADDL. CITY CIVIL AND SESSIONS JUDGE,
COMMERCIAL COURT, BANGALORE IN COM O.S. 485/2025 ON
THE I.A NO.1 OF 2025 AS ANNEXURE-A.

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

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI



ORAL ORDER

Aggrieved by the order passed in I.A.No.I in Com.O.S.No.485/2025 filed by defendant No.4 under Section 151 CPC dated 10.10.2025 by the LXXXIX Addl. City Civil and Sessions Judge, Commercial Court, Bangalore, the petitioner/plaintiff is before this Court.

2. The petitioner/plaintiff had filed a suit seeking direction to the defendants to pay an amount of Rs.3,60,00,000/- jointly and severally and further directing defendant No.4 not to create lien on the scheduled property belonging to defendant No.1 in respect of the claim of the plaintiff. The other prayer sought is directing defendant No.4 to pay the outstanding amount to the defendants, out of the sale consideration received on sale of the scheduled property by it in an auction after adjusting liability of defendant No.4.

3. Defendant No.4 has initiated the proceedings under the SARFAESI Act and sold the property in the public auction on 26.03.2025 for a sale consideration of Rs.7,07,56,000/-. The amount due to defendant No.4 is Rs.1,40,00,000/- and after deducting the said amount, the present application is filed by



defendant No.4 under section 151 of CPC seeking permission to the Bank to hand over the D.D for an amount of Rs.5,68,45,134/- dated 31.07.2025 drawn in favour of the 1st defendant to defendant No.2 and 3 and to deposit the demand draft to the account of the Court. The court by order impugned directed the 4th defendant to hand over the demand draft to defendant Nos.2 and 3. Further the Court has directed defendant Nos.1 to 3 to execute indemnity bond by undertaking to deposit the amount before the Court if a direction is issued in future and directed to report compliance on 18.10.2025. The Court has observed that the plaintiff is absent, defendant Nos.2 and 3 are present, and defendant No.4 is absent. Call on for compliance of the order and also for filing statement of admissions and denial of documents by 18.10.2025. This order was passed on 10.10.2025. On 13.10.2025, the petitioner/plaintiff had filed two IAs, one is to recall the order dated 10.10.2025 and also second IA is filed under Order 38 Rule 5 CPC for an order of attachment before judgment attaching the amount of Rs.5,68,45,134/-. Even before the said applications are heard by the Court, the petitioner/plaintiff has come before this court by filing the



instant petition. On 13.10.2025, a Co-ordinate Bench of this Court had passed an order granting stay of operation of the order dated 10.10.2025 and the respondent/defendant Nos.1 to 3 have filed the vacant petition.

4. Learned Senior Counsel Sri. Vivek Subba, representing the learned counsel for the petitioner, learned counsel for the petitioner submits that the main prayer that is sought in the suit is that once the property is sold, whatever is the remaining amount that is realised by the defendant No.4 shall be given to the plaintiff. It is submitted that I.A.No.1 is filed by defendant No.4, to which they have filed their detailed objections on 23.09.2025, wherein they have sought for a relief that the application filed by the defendant may be dismissed. If the said application is allowed, the plaintiff will suffer irreparable loss and injury and will be put to severe hardship. It is submitted that defendant No.4 is in an unreasonable hurry to pay the amount to defendant Nos.1 to 3 rather than aiding in rendering justice to the plaintiff in the recovery of the amount which is due. It is also further stated that defendant No.4 is legally and morally wrong in requesting an order from the Court



permitting it to hand over the Demand Draft for an amount of Rs.5,68,41,134/-. It is the grievance of the plaintiff that the Court has not considered the objections and passed an order directing the D.D to be handed over to defendant Nos.2 and 3. It is further submitted by the learned Senior counsel that the application under Order 38 Rule 5 of CPC is pending consideration and in the meantime if the D.D is handed over to the defendants, considering the fact that there is a history of cheque bounce cases against defendant Nos.1 to 3, it would be difficult for the plaintiff to recover the amount and hence, there may be a direction to the trial Court to dispose of the IA that is filed under Order 38 Rule 5 of CPC. Until such time, order dated 10.10.2025 shall not be given affect.

5. Learned Senior Counsel Sri D.R Ravishankar representing the learned counsel for defendants Nos.1 to 3 submits that the property was sold under the SARFAESI Act and under the Act, once the dues of the secured creditor are satisfied, the borrower is entitled for the remaining amount. There is no question of placing the D.D before the Court. It is submitted that the Court has rightly passed an order to hand



over the D.D to defendant Nos.2 and 3. It is submitted that the plaintiff's application under Order 38 Rule 5 of CPC is still pending consideration after the order was passed on 10.10.2025, and these two applications were filed on 13.10.2025 and one is yet to be decided. It is submitted that Rule 9 of SARFAESI Rule makes it clear that after the due amount is adjusted, the remaining amount has to be given to the borrower. When two applications are filed, without inviting an order on that and without any cause of action, the petitioner/plaintiff has come before the Court. In view of the interim order passed by this Court, D.Ds were not handed over to the petitioner. The petitioner is seeking independent relief from the Court, and the order passed by the trial Court is a well-considered one.

6. Having heard the learned senior counsels on either side, perused the material on record. The reliefs that are sought by the plaintiff in the suit are as follows:

"14. The plaintiff therefore prays for a judgment and decree against the defendants;

(a) Directing the defendants, jointly or severally to pay to the plaintiff a sum of Rs.3,60,00,000/- (Rupees Three Crore and Sixty



Lakhs only) together with court costs and current and future interest at the rate of 18% per annum, for the date of suit till payment,

(b) Directing the 4th defendant to Note/create a lien on the schedule property belonging to first defendant, in respect of the claim of the plaintiff, and

(c) Directing the 4th defendant to pay the outstanding amount of the defendants herein to the plaintiff, out of sale consideration received on sale of the schedule property by it in an auction after adjusting liability of the 4th defendant,

(d) Granting such other relief's as this Hon'ble Court deems fit to grant in the circumstances of the case in the interest of justice and equity."

7. The whole dispute revolves around the agreement dated 04.01.2024, i.e. between the plaintiff and defendant Nos.1 to 3. In the said agreement there is a mention about defendant No.4 and there are other terms and conditions in the said agreement. As the dispute arose with regard to the said agreement, the plaintiff has approached the Court by filing the instant suit.

8. The plaintiff has filed his objections on how the amount cannot be handed over to defendant No.3 and in the order impugned there is no discussion with regard to why the objections of the plaintiff are not considered. Admittedly, the



application under Order 38 Rule 5 CPC is pending consideration. The Court, without giving any reasons and without considering the objections of the plaintiff and the I.A that is pending under Order 38 Rule 5 CPC, ought not to have allowed this application. Balancing the interest of all the parties, this Court is passing the following:

ORDER

- i. The order passed on I.A.No.1 in Com.O.S.No.485/2025 dated 10.10.2025 by the LXXXIX Addl. City Civil and Sessions Judge, Commercial Court, Bangalore is ***set aside*** and the matter is ***remanded back*** to the trial Court.
- ii. The trial Court shall consider IA No.1 filed by defendant No.4 in the light of the objections filed by the plaintiff and also the other IA which is filed under Order 38 Rule 5 within a period of one week from the date of receipt of the copy of the order and shall pass orders.
- iii. This Court has not expressed anything on the merits of the matter, and uninfluenced by any of the observations made by this Court



in this order, the Court shall independently decide the application on the merits of the matter and in accordance with law.

- iv. Accordingly, the writ petition is ***disposed of.***
- v. All I.As. in this writ petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

PKN
List No.: 2 Sl No.: 1