HC-KAR

NC: 2026:KHC:44969-DB
COMAP No. 450 of 2025

CNR: KAHC010546422025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

COMMERCIAL APPEAL NO.450 OF 2025

BETWEEN:

1. MR. LESLIE D'SOUZA
AGED 60 YEARS,

2. MRS. CANDIDA D'SOUZA
AGED MAJOR,
W/O MR. LESLIE D'SOUZA

BOTH ARE R/AT FLAT NO.A-200,
FERM SAROJ APARTMENT,
LBS NAGAR, BENGALURU - 560017. …APPELLANTS

(BY MS. ADHIRA A., ADVOCATE FOR
SRI. HITESH KUMAR, ADVOCATE (V.C.))

AND:

M/S. MANIPAL HEALTH ENTERPRISES PVT. LTD.,
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 2013
HAVING ITS REGISTERED OFFICE AT
THE ANNEXE, NO.98/2, RUSTOM BAGH,
HAL AIRPORT ROAD,
BENGALURU - 560017
REP. BY ITS AUTHORIZED SIGNATORY
MR. ANEESH VINAY RAJ. …RESPONDENT

(BY SMT. LAKSHMI A.N. RAO, ADVOCATE FOR
SRI. M. JAGADEESH, ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1A) OF THE COMMERCIAL COURTS ACT, PRAYING TO ALLOW THE PRESENT APPEAL AND SET ASIDE THE IMPUGNED JUDGMENT AND

DECREE DATED 10.01.2025 PASSED BY THE LXXXVIII ADDITIONAL CITY CIVIL & SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT), BENGALURU CITY IN COM.O.S.NO.1336/2024 (ANNEXURE-A) AND ETC.

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

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

(PER: HON'BLE MRS. JUSTICE K.S. HEMALEKHA)

1. The present commercial appeal is preferred by the appellants (defendants) impugning the judgment and decree dated 10.01.2025 passed in Com. O.S. No.1336/2024 by the LXXXVIII Additional City Civil and Sessions Judge (Exclusive Commercial Court), Bengaluru City (CCH-89) [**Commercial Court**], whereby the suit instituted by the plaintiff (respondent) for recovery of money came to be decreed directing the appellants to pay a sum of ₹13,66,057/- together with interest at the rate of 18% per annum from the date of suit till realisation along with costs.

Brief Facts

2. The respondent instituted the aforesaid commercial suit contending that appellant No.1 had been admitted to Manipal

Hospital for hospitalisation, treatment and other medical services. According to the respondent, the medical expenses incurred in respect of appellant No.1 amounted to ₹31,13,156/-. It was contended that considering the financial constraints expressed by the appellants, the respondent, as a special case, agreed to accept a reduced amount of ₹13,66,057/- towards the medical expenses. It was further contended that appellant No.2, who is the wife of appellant No.1, expressed her inability to make a payment and instead, raised an allegation of medical negligence against the respondent and its medical staff. According to the respondent, appellant No.1 was thereafter discharged from the hospital. Despite issuance of legal notice dated 27.09.2023 calling upon the appellants to pay the outstanding amount, the amount was not paid. The appellants did not participate in the Pre-Institution Mediation Proceedings. Consequently, the respondent instituted the Commercial Suit on 27.09.2024 seeking recovery of ₹13,66,057/- together with interest.

3. Upon institution of the suit, summons came to be issued to the appellants. The appellants did not appear before the Commercial Court and were consequently placed *ex parte*.

4. The respondent examined its authorized representative as PW.1 and produced documentary evidence in support of its claim.

Findings of the Commercial Court

5. The Commercial Court considered the evidence of PW.1 and the documents produced by the respondent. In the absence of any appearance or defence on behalf of the appellants, the evidence of the respondent remained unchallenged and unrebutted. The Commercial Court accordingly answered the points for consideration in favour of the respondent and held that the respondent had established its claim for ₹13,66,057/- and decreed the suit.

Submissions

6. The learned counsel appearing for the appellants submits that the impugned judgment and decree are unsustainable, as the appellants were denied an effective opportunity to contest the suit. The principal contention is that the appellants were not duly served with the summons and had no knowledge of the institution or pendency of the commercial suit before they were proceeded

against *ex parte*. It is submitted that, much prior to the institution of the commercial suit, the appellants had issued a legal notice dated 18.10.2023, claiming compensation of ₹50,00,000/- from the respondent on account of alleged medical negligence. The respondent, in its reply dated 07.11.2023, denied the allegations contained in the said notice.

7. It is submitted that appellant No.2 instituted Consumer Complaint in C.C. No.35/2024 before the II Additional District Consumer Disputes Redressal Commission, Bengaluru [**Consumer Commission**] on 10.06.2024, in respect of the dispute between the parties. The address of the appellants disclosed in the said consumer proceedings was No.59, Grace Town, 2nd Cross, Hennur Main Road, Bengaluru. The commercial suit came to be instituted only thereafter, i.e., on 27.09.2024. Reliance is also placed upon a rental agreement dated 01.08.2024 to contend that the appellants were not residing at the address at which the summons in the commercial suit were purportedly served.

8. It is submitted that the summons issued in the commercial suit were returned with an endorsement "unclaimed". Despite the

same, no further effective steps were taken by the respondent to bring to the notice of the appellants about the institution of the commercial suit. It is submitted that if the appellants are afforded an opportunity of being heard, they would place before the Commercial Court the circumstances relating to the treatment of appellant No.1, including his alleged deterioration from a conscious state to a comatose condition, the allegation concerning multiple procedures and surgeries, and other circumstances, which according to the appellants, constitute medical negligence and deficiency in service.

9. The learned counsel appearing for the respondent sought to justify the impugned judgment and decree. It is submitted that the summons were issued to the address furnished by the appellants themselves in their correspondence with the respondent, including the legal notice. It is submitted that, even in the execution proceedings, notice was served upon the appellants at the very same address. According to the learned counsel, the appellants, having failed to appear before the Commercial Court despite service of summons, cannot now contend that they were denied an

opportunity of being heard. It is further submitted that the appellants deliberately refrained from appearing before the Commercial Court and no justification has been made out for interfering with the *ex parte* judgment and decree.

Analysis and conclusion:

10. The principal question that arises for consideration is whether the appellants had been duly and effectively served with the summons in the commercial suit before they were proceeded against *ex parte*. The answer to the said question has to be considered in the background of the material circumstances preceding and surrounding the institution of the suit.

11. The appellants had, much prior to the institution of the commercial suit, raised a dispute with the respondent in relation to the treatment of appellant No.1. A legal notice dated 18.10.2023 was issued by the appellants alleging medical negligence and claiming compensation of ₹50,00,000/-. The respondent replied to the said notice, denying the allegation. Thereafter, appellant No.2 instituted Consumer Complaint No.35/2024 before the Consumer Commission. Appellant No.2, Mrs. Candida D'Souza filed her

affidavit before the Consumer Commission on 10.06.2024 and the evidence of Dr. Sathwik R. Shetty, on behalf of the respondent-M/s. Manipal Health Enterprises Pvt. Ltd., was led before the Consumer Commission on 27.08.2024. Thus, the proceedings before the Consumer Commission were actively being prosecuted by the appellants.

12. The respondent thereafter instituted the commercial suit on 27.09.2024. The summons issued in the commercial suit were returned with an endorsement "unclaimed". The said endorsement is not in dispute. The appellants rely upon the address shown by them in the consumer proceedings namely No.59, Grace Town, 2nd Cross, Hennur Main Road, Bengaluru and also upon the rental agreement dated 01.08.2024 to contend that they were residing at the said address and not at the address to which the summons in the commercial suit were sent.

13. What is significant is that the respondent was a party to the consumer proceedings. It was, therefore, aware of the proceedings instituted by the appellants and of their participation therein. In particular, the respondent was aware that appellant No.2 had led

her evidence and was actively contesting the dispute before the Consumer Commission. The commercial suit came to be instituted thereafter on 27.09.2024. In these circumstances, when the summons issued in the commercial suit were returned with the endorsement "unclaimed", the respondent ought to have taken further steps to ensure effective service upon the appellants. An effort could have been made to serve the appellants at the address disclosed before the Consumer Commission or by adopting any other permissible mode of service. There is, however, no material on record to indicate that any such effort was made. The steps taken in the execution proceedings at the same address relied upon by the respondent, do not, by themselves, resolve the question of effective service of summons in the commercial suit. The appellants contend that, although the said address was their permanent address, in the interregnum they were not residing at the aforesaid address. The effective service of summons in the commercial suit was not established before the appellants were proceeded against *ex parte* and a decree came to be passed on 10.01.2025.

14. In the aforesaid circumstances, we are of the view that the appellants ought to be afforded an opportunity to contest the suit on merits. We do not propose to examine the rival allegations concerning medical negligence or the correctness of the amount claimed by the respondent.

15. Accordingly, the appeal is allowed. The impugned judgment and decree dated 10.01.2025 passed in Com. O.S. No.1336/2024 by the Commercial Court is hereby set aside. The matter is remitted back to the Commercial Court for fresh consideration and disposal in accordance with law. All contentions of the parties are kept open. The parties shall appear before the Commercial Court on 16.09.2026.

16. Pending interlocutory applications also stand disposed of.

Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE

Sd/-
(K.S. HEMALEKHA)
JUDGE

MBM
List No.: 2 Sl No.: 16