HC-KAR

NC: 2026:KHC:56425
WP No. 24777 of 2026

CNR: KAHC010540202026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 8TH DAY OF OCTOBER, 2026

BEFORE

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

WRIT PETITION NO. 24777 OF 2026 (GM-CPC)

BETWEEN:

1. COUNFREEDISE RETAIL SERVICES LIMITED
A COMPANY INCORPORATED UNDER THE
COMPANIES ACT, 2013
HAVING ITS OFFICE AT 51/1A2, AY
HEGGADADEVANAPURA VILLAGE,
HUSKUR ROAD, ALUR POST,
DASANAPURA HOBLI, BENGALURU,
KARNATAKA 562162
REPRESENTED BY ITS DIRECTOR
SRI ABHINANDAN M.

...PETITIONER

(BY SRI BHARATH SHETTY, ADVOCATE)

AND:

1. SSIPL LIFESTYLE PRIVATE LIMITED
COMMUNITY CENTRE,
NEW FRIENDS COLONY,
NEW DELHI - 110025
REPRESENTED BY ITS AUTHORISED
REPRESENTATIVE
SMT. SURBHI PODDAR.

...RESPONDENT

(BY SMT. JAYNA KOTHARI, SENIOR COUNSEL FOR
SRI NAVEEN CHANDRA, ADVOCATE FOR C/R)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER DATED 30.07.2026 IN IA NO. 2 AS PER ANNEXURE-C1 PASSED IN COM. MISC. PET. NO. 12/2026 ON THE FILE OF PASSED BY THE XI ADDL. CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURTS AT BENGALURU AS PER ANNX-A.

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

The present petition impugns the order dated 30.07.2026 passed on I.A. No. 2, filed under Section 16 of the Commercial Courts Act read with Order XLI Rule 5 of the Code of Civil Procedure, 1908 (for short, 'CPC'), seeking a stay of the execution proceedings in Com.Ex.No.97/2026, subject to compliance with the conditions imposed in Com.Ex.No. 97/2026 dated 07.07.2026.

2. Learned counsel for the petitioner submits that the decree dated 12.01.2026 passed in Com.O.S.No.188/2025 was obtained by misrepresentation, suppression of material facts and fraud. Learned counsel further submits that, in exercise of its inherent powers under Section 151 of the CPC, the Commercial Court ought to have granted an unconditional stay

of the decree, while exercising jurisdiction under Order IX Rule 13 of the CPC. Learned counsel further submits that the petitioner has no financial means to satisfy the decree.

2.1 In support of the aforesaid submissions, learned counsel places reliance on the judgment of the High Court of Calcutta in ***Emars Mining and Construction Pvt. Ltd. v. Majunath Hebbar, dated 13.01.2021***, and the judgment of the Hon'ble Supreme Court in ***Lifestyle Equities C.V. and Another v. Amazon Technologies Inc***., in SLP No. 19767/2025, decided on 07.10.2025. Learned counsel also places reliance on the judgment of the Hon'ble Supreme Court in ***A.V. Papayya Sastry and Others v. Govt. of A.P. and Others, [(2007) 4 SCC 221***].

3. Per contra, learned Senior Counsel appearing for the respondent on caveat submits that the impugned order is in conformity with the order dated 07.07.2026 passed by the Commercial Court in Com. Ex. P. No. 97/2026, whereby the decree was stayed subject to the deposit of 50% of the decretal amount on or before 10.07.2026. Learned Senior Counsel draws the attention of this Court to the order passed by the

Coordinate Bench in W.P. No. 21546/2026 dated 29.07.2026, challenging the order dated 07.07.2026 passed in Com. Ex. P. No. 97/2026, wherein the writ petition challenging the conditional interim order came to be dismissed.

3.1 Learned Senior Counsel further submits that the impugned order arises from a petition filed under Order IX Rule 13 of the CPC, in which the Court cannot examine the issue of misrepresentation. It is submitted that the allegations of misrepresentation and fraud cannot be considered in view of the limited scope of the proceedings under the said provision.

3.2 Learned Senior Counsel further submits that, as observed by the Coordinate Bench in W.P. No. 21546/2026 supra, in the case of money decrees, 100% of the decretal amount is required to be deposited. However, the Execution Court, taking a liberal view, granted a stay subject to the deposit of only 50% of the decretal amount. In view of the above submissions, learned Senior Counsel seeks dismissal of the petition.

4. Considered the submissions made by learned counsel for the petitioner and learned Senior counsel appearing for the respondent.

5. The respondent herein instituted Com. O.S. No. 188/2025 for recovery of money, which resulted in a decree directing the defendant to pay a sum of Rs.11,14,73,900/- with interest at 18% per annum. In the said commercial suit, the petitioner herein was placed ex parte.

5.1 The decree holder instituted Com.Ex.No. 97/2026, in which the petitioner/judgment debtor filed an application under Order XXI Rule 26 of the CPC. The said application was entertained subject to the deposit of 50% of the decretal amount. The said order was challenged before this Court in W.P. No. 21546/2026, which came to be dismissed, thereby confirming the order passed by the Execution Court.

5.2 The impugned order has been passed in a petition filed under Order IX Rule 13 of the CPC. The Commercial Court, taking note of the order dated 07.07.2026 passed in Com.Ex.No. 97/2026 and also recording the submission of the

judgment debtor that some time be granted to comply with the conditional order passed by the Execution Court, proceeded to pass the impugned order.

5.3 It is to be noted that the petitioner has already failed in his challenge to the order dated 07.07.2026 passed in Com.Ex.No. 97/2026. The scope of the present petition is limited. The impugned order merely reiterates the order passed in the execution proceedings. It is undisputed that the conditions imposed by the order dated 07.07.2026 passed in Com. Ex. P. No. 97/2026 remain uncomplied with.

5.4 Further, in a petition filed under Order IX Rule 13 of the CPC, the scope of inquiry is confined to determining whether sufficient cause has been shown for setting aside the ex parte decree, including whether the judgment debtor was prevented by sufficient cause from appearing before the Court. While exercising jurisdiction under Order IX Rule 13 of the CPC, the Court cannot examine the merits of the decree. Such an exercise has to be undertaken in appeal against the decree, which falls outside the scope of proceedings under the said provision.

6. Learned counsel for the petitioner submits that, in view of Section 151 of the CPC, the Trial Court, while exercising jurisdiction under Order IX Rule 13 of the CPC, can set at naught a decree obtained by fraud.

6.1 The Hon'ble Supreme Court, in ***A. V. Papayya Sastry*** (supra), has held that a judgment, decree or order obtained by playing fraud on a Court, Tribunal or Authority is a nullity and non est in the eye of law. However, such pleadings or grounds cannot be considered in an application filed under Order IX Rule 13 of the CPC.

6.2 In ***Emars Mining and Construction Pvt. Ltd.*** (supra), the Calcutta High Court has referred to the judgment of the Hon'ble Supreme Court in ***Ram Prakash Agarwal v. Gopi Krishan, [(2013) 11 SCC 296],*** wherein the scope of Section 151 of the CPC was examined. The Hon'ble Supreme Court held that where, owing to a mistake of the Court, an ex parte order is passed on account of fraud played upon the Court or collusion, and the person aggrieved by such order has no remedy under the provisions of the CPC to correct the

mistake committed by the Court, Section 151 of the CPC can be invoked.

6.3 In the present case, the petitioner merely contends that the decree was passed as a result of fraud played by the decree holder. Such a submission, by itself, is insufficient to invoke Section 151 of the CPC unless the judgment debtor is left without any remedy under the CPC. It is not the case of the petitioner that no remedy is available under the CPC to address the alleged fraud in obtaining the decree. In that view of the matter, the said judgment is not applicable to the facts of the present case.

6.4 The Hon'ble Supreme Court, in ***Lifestyle Equities C.V. and Another*** (supra), while examining the scope of the power of an Appellate Court to stay the execution of a decree under Order XLI of the CPC, held that an unconditional stay of execution may be granted where an exceptional case is made out before the Appellate Court. The Hon'ble Supreme Court further cautioned that the discretion of the Appellate Court to grant an unconditional stay must not be exercised arbitrarily and that such discretion must be exercised sparingly, only

where an exceptional case is made out. The exceptional circumstances have been illustrated in sub-paragraphs (8) and (9) of paragraph 134. For convenience, the relevant portion is extracted below:

> *"VIII) For the grant of benefit of an unconditional stay of execution of a decree, an exceptional case has to be made out before the appellate court. This discretion of the appellate court to grant an unconditional stay of execution of decree must not be exercised arbitrarily. It must be exercised sparingly and only if an exceptional case is made out for such stay in view of the peculiar facts and attending circumstances of the case before it.*
>
> *(IX) A lodestar for bringing a case within the purview of "exceptional case" for the purpose of granting benefit of unconditional stay of the execution of money decree by the appellate court would be, if the money decree in question: -*
>
> *(i) is egregiously perverse;*
>
> *(ii) is riddled with patent illegalities;*
>
> *(iii) is facially untenable; and/or*
>
> *(iv) such other exceptional causes similar in nature."*

6.5 The case on hand does not satisfy the exceptional circumstances enumerated by the Hon'ble Supreme Court. Moreover, it appears that, with a view to avoiding coercive action in the course of the execution proceedings, the petitioner

issued two cheques towards partial discharge of the decretal liability to the extent of Rs.3.5 crores, which were dishonoured.

6.6 Further, learned counsel appearing for the petitioner made a submission before the Commercial Court that, if the time granted in the execution proceedings were extended, the condition requiring deposit of 50% of the decretal amount would be complied with. In that view of the matter, the petitioner's allegation of fraud does not merit acceptance, particularly in the face of the aforesaid conduct.

6.7 This Court is satisfied, at least prima facie, that the present petition amounts to an abuse of the judicial process and is intended to interject the execution proceedings. Having regard to the manner in which the petitioner has conducted the proceedings and the unsustainable assurances given regarding compliance with the conditions imposed by the Court, this Court is constrained to direct the Execution Court to conclude the execution proceedings within a time-bound period.

6.8 The Hon'ble Supreme Court, in ***Periyammal (Dead) Through LRs and Others v. V. Rajamani and***

Another, Etc., [2025 INSC 329], has held that execution proceedings should be concluded within six months from the date of filing. In view of the said judgment, the Execution Court is directed to endeavour to conclude the execution proceedings expeditiously, within the timeline contemplated by the Hon'ble Supreme Court in the aforesaid judgment.

7. The writ petition, being devoid of merit, is accordingly dismissed.

Sd/-
(K. V. ARAVIND)
JUDGE

VBS
List No.: 1 Sl No.: 6