NC: 2024:KHC:52238-DB
COMAP No. 283 of 2023 C/W
COMAP No. 466 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

COMMERCIAL APPEAL NO. 283 OF 2023

C/W

COMMERCIAL APPEAL NO. 466 OF 2023

IN COMAP No. 283/2023:

BETWEEN:

1. SRI. VIMAL JAIN (KATARIA)
SON OF MANOHAR LAL JAIN,
AGED ABOUT 45 YEARS,
RESIDING AT NO. 647,
VAISHNODEVI LOPULENCE,
FLAT NO. 504, 16TH CROSS, 19TH MAIN,
IDEAL HOMES SOCIETY,
KENCHENAHALLI, RAJARAJESHWARINAGAR,
BENGALURU-560 098.

2. M/S. VAISHNODEVI LUSH GREENS PVT. LTD.,
A PARTNERSHIP FIRM HAVING
ITS OFFICE AT NO. 459,
4TH FLOOR, 12TH MAIN,
NEAR POST OFFICE, MC LAYOUT,
VIJAYANAGARA,BENGALURU-560 040.
REPRESENTED BY ITS
MANAGING DIRECTOR,
SRI. VIMAL JAIN (KATARIA).

...APPELLANTS

(BY SRI. VIKRAM HUILGOL, SR. COUNSEL, A/W
SRI. M. N. MADHUSUDHAN, ADVOCATE)

Digitally signed by K G RENUKAMBA
Location: High Court of Karnataka

AND:

1. M/S. BINDU PROPERTIES,
A PARTNERSHIP FIRM CONSTITUTED
UNDER THE INDIAN PARTNERSHIP ACT,
HAVING ITS OFFICE AT NO. 2,
1ST MAIN, WEST OF CHORD ROAD,
INDUSTRIAL TOWN, RAJAJINAGARA,
BENGALURU-560 079.
REPRESENTED BY ITS
MANAGING PARTNER,
SRI. JAYESH Z. SHAH,
SON OF ZAVERCHAND N SHAH,
AGED ABOUT 56 YEARS.

2. SRI. B. SOMASHEKAR,
SON OF LATE BYLAPPA,
AGED ABOUT 48 YEARS,
RESIDING AT NO. 6,
8TH CROSS, HOSAHALLI, WARD NO. 124,
BENGALURU-560 040.

3. SRI. K. M. MANJUNATH,
SON OF K. T. MYLARAPPA,
AGED ABOUT 37 YEARS,
RESIDING AT NO. 938,
"KEERTHI NIVAS", 1ST MAIN,
6TH 'A' CROSS, KENGERI SATELLITE TOWN,
BENGALURU-560 060.

4. SRI. G. N. KRISHNA,
SON OF LATE NANJAYYA,
AGED ABOUT 62 YEARS,
RESIDING AT NO. 1011/1354,
8TH CROSS, 1ST 'H' MAIN,
2ND PHASE, GIRINAGAR,
BENGALURU-560 085.

5. SRI. SANDEEP KUMAR JAIN,
SON OF MAHENDRA KUMAR JAIN,
AGED ABOUT 39 YEARS,

RESIDING AT NO. 9/21,
9TH FLOOR, FLAT NO. A-903,
ASTER BLOCK, THE GARDEN APARTMENTS,
OPP. ANGALA PARAMESHWARI TEMPLE,
BENGALURU-560 023.

6. SRI. ANIL KUMAR AGARWAL,
SON OF LATE RAM PRATHAP AGARWAL,
AGED ABOUT 52 YEARS,
RESIDING AT NO. H-801,
ETA APARTMENTS,
OPP. BINNY MILL, MAGADI ROAD,
BENGALURU-560 023.

7. SRI. MOHAN LAL,
SON OF AMARA RAM,
AGED ABOUT 40 YEARS,

8. SMT. RADHA,
WIFE OF MOHAN LAL,
AGED ABOUT 37 YEARS,

BOTH ARE RESIDING AT NO. 49/A,
GARDEN ROAD, NAYANDAHALLI,
BENGALURU-560 039.

9. SMT. SONU AGARWAL,
WIFE OF ANIL KUMAR AGARWAL,
AGED ABOUT 45 YEARS,
RESIDING AT NO. H-801,
ETA APARTMENTS, OPP. BINNI MILL,
MAGADI ROAD,
BENGALURU-560 023.

10. SRI. NITIN JHABAK,
SON OF SOHAN LAL JHABAK,
AGED ABOUT 45 YEARS,
RESIDING AT NO. A-1104,
MELODY APARTMENT, MYSURU ROAD,
NAYANDAHALLI,
BENGALURU SOUTH - 560 039.

11. SRI. SEEMA JAIN,
WIFE OF SANDEEP KUMAR JAIN,
AGED ABOUT 39 YEARS,
RESIDING AT NO. 9/21,
9TH FLOOR, FLAT NO. 903,
ASTER BLOCK, THE GARDENS APARTMENT,
OPP. ANGALA PARAMESHWARI TEMPLE,
MAGADI ROAD,
BENGALURU-560 023.

12. SRI. PRAVEEN CHHAJER,
SON OF C. ASHOK KUMAR CHHAJER,
AGED ABOUT 37 YEARS,
RESIDING AT NO. 240/7,
FLAT NO. 008, MARS MEADOWS APARTMENT,
60 FEET MAIN ROAD,
BEHIND R.R. NAGAR POLICE STATION,
BEML LAYOUT, 5TH STAGE,
BENGALURU-560 098.

13. SRI. RAJESH PATEL,
SON OF JAYANTHI LAL H PATEL,
AGED ABOUT 29 YEARS,
RESIDING AT
SRI. SHANKARA SAW MILL,
K.M. ROAD, JYOTHINAGARA,
CHIKKAMAGALURU-577 102.

14. SRI. SOORAJ H PATEL,
SON OF HIRA LAL PATEL,
AGED ABOUT 27 YEARS,
RESIDING AT NO. 21/1,
HBCS LAYOUT, VIDHYAGIRI LAYOUT,
NAGARABHAVI,
BENGALURU-560 072.

15. SRI. DILIP R PATEL,
SON OF R. H. PATEL,
AGED ABOUT 41 YEARS,
RESIDING AT NO. 648D, G-4,

RESIDENCY, 19TH MAIN,
IDEAL HOME SOCIETY,
KENCHANAHALLI MAIN ROAD,
R.R. NAGAR,
BENGALURU-560 098.

16. SRI. DHIRAJ LAL T PATEL,
SON OF TEJA LAL PATEL,
AGED ABOUT 43 YEARS,
RESIDING AT K. M. ROAD,
SRI. SHANKAR SAW MILL,
JYOTHINAGARA,
CHIKKAMAGALURU-577 102.

17. SRI. BHAVESH C PATEL
SON OF CHANDU LAL PATEL,
AGED ABOUT 29 YEARS,
RESIDING AT NO. 2914,
SHIVAKRUPA, 14TH MAIN,
ATTIGUPPE, VIJAYANAGAR II STAGE,
BENGALURU-560 040.

18. SRI. RAHUL C PATEL,
SON OF CHIMAN LAL N PATEL,
AGED ABOUT 34 YEARS,
RESIDING AT JHANAKI NIVAS,
10TH MAIN, 1ST 'A' CROSS,
KALYAN CO-OPERATIVE SOCIETY,
RPC LAYOUT, VIJAYANAGAR II STAGE,
BENGALURU-560 040.

19. SRI. GOURAV S VAJIR
S/O SURESH KUMAR VAJIR
AGED ABOUT 36 YEARS,
R/AT NO. 307, SHIVASHREE GARDEN,
BLOCK -II, 1st MAIN, 4th CROSS, 5th STAGE,
BEML LAYOUT, R R NAGAR,
BENGALURU -560 098

20. SRI. JAGADISH KUMAR,
S/O ESHWAR LAL,

AGED AOBUT 39 YEARS,
R/AT NO. 613
HOME RESIDENCY, 3Rd FLOOR,
KUVEMPU MAIN ROAD,
SHREE VISHWESHRAIAH LAYOUT,
8TH BLOCK, BENGLAURU-560 091.

21. SRI. DILIP R PATEL,
S/O R H PATEL,
AGED ABOUT 41 YEARS,
R/AT NO. 648D,
G-4 RESIDENCE, 19th MAIN,
IDEAL HOME SOCIETY,
KENCHENAHALLI MAIN ROAD,
R R NAGAR, BENGLAURU- 560 098.

22. SRI. VIPUL PATEL,
S/O MOHANALAL PATEL
AGED ABOUT 34 YEARS,
RESIDING AT NO. 67A/1,
BELGACHIA ROAD, BELAGACHIA,
KOLKATA, WEST BENGAL -700 037.

23. SRI. MOTHILAL KHIMJI PATEL,
S/O KHIMJI S PATEL,
AGED ABOUT 48 YEARS,
R/AT NO. 21, SHIVA KRUPA,
3rd CROSS, 4th MAIN,
VIDHYAGIRI LAYOUT, NAGARABHAVI,
BENGALURU -560 072.

24. SRI. RAJESH J PATEL,
S/O JAYANTHI LAL H PATEL,
AGED ABOUT 29 YEARS,
R/AT SHREE SHANKARA SAW MILL,
K M ROAD, JYOTHINAGARA,
CHIKKAMAGALURU -577 102.

25. SRI. HARSHAD S PATEL,
S/O SHAMJI LADHABAHI PATEL,
AGED ABOUT 36 YEARS,

R/AT NO. 671, MANDIR
10TH MAIN, II STAGE,
HAMPINAGAR, VIJAYANAGAR,
BENGALURU -560 104.

26. SRI. NITIN SHAMJI PATEL,
S/O SHAMJI LADHABHAI PATEL,
AGED ABOUT 41 YEARS,
R/AT NO. 671 MANDIR,
10th MAIN, II STAGE,
HAMPINAGAR, VIJAYANAGAR
BENGALURU -560 104.

27. SMT. SUNITHA JAIN,
W/O RAJENDRA KUMAR JAIN,
AGED ABOUT 41 YEARS,
R/AT NO. 1, DANDI SUBBANNA LANE,
SOURASTRAPET, CHICKPET,
BENGALURU -560 079.

28. GARIMA POLYPLAST PVT. LTD.,
OFFICE AT NO. 65, 1st MAIN ROAD,
PETECHANNAPPA INDUSTRIAL ESTATE,
KAMAKSHIPALYA,
BENGALURU - 560 079,
REPT. BY ITS DIRECTOR,
SRI. ANIL KUMAR AGARWAL,
S/O LATE RAM PRATHAP AGARWAL,
R.AT NO. H -801, ETA GARDEN APARTMENT
OPP. BINNI MILL, MAGADI ROAD,
BENGLAURU -560 023.

29. SRI. AJAY KUMAR BOHRA,
S/O CHANDMAL JI BOHRA,
AGED ABOUT 40 YEARS,
R.AT NO. 774/71, 6TH 'B' CROSS,
POST OFFICE ROAD,
SRINAGAR, BENGALURU-560 050.

30. MS. PAVITHRA .C,
D/O M V CHANDRAKANTH,

AGED ABOUT 26 YEARS,
R/AT NO. 1310, 1ST CROSS,
RAMDEV GARDEN,
KACHARAKANAHALLI,
BENGLAURU-560 084.

31. M/S INDRADHANUSH
MASTER BATCHES PVT. LTD.,
HAVING ITS OFFICE AT NO. 94 AND 95,
BAIRAVESHWARA INDUSTRIAL AREA,
ANDARAHALLI MAIN ROAD,
HEGGANAHALLI, BENGLAURU URBAN,
BENGALURU -560 091.
REPT. BY ITS DIRECTOR,
SRI. ANKITH CHOUDHARY,
S/O HARIH OM CHOUDHARY,
AGED ABOUT 38 YEARS,

32. SRI. R RAMANJANEYA,
S/O LATE RAJANNA,
AGED ABOUT 42 YEARS,
R.AT CHIKKALURU VILLAGE,
RAMOHALLI POST, TAVAREKERE HOBLI,
BENGALURU -560 060.

33. MS. BHOOMIKA K,
D/O KRISHNA G N,
AGED ABOUT 21 YEARS,
R.AT NO. 1011/1354, MATHRU KUTEERA
8TH CROSS, 1ST 'H' MAIN II PHASE,
NEAR GIRINAGAR POLICE STATION,
HOSAKEREHALLI,
BENGALURU -560 085.

34. SMT. R NAGARATHNA,
W/O KRISHNA G N,
AGED ABOUT 57 YEARS,
R.AT NO. 1011/1354,
MATHRU KUTEERA, 8TH CROSS,
1ST 'H' MAIN II PHASE,

NEAR GIRINAGAR POLICE STATION,
HOSAKEREHALLI,
BENGLAURU -560 085.

35. SRI. JAY PUNAMIYA,
S/O JAGADISH R PUNAMIYA,
AGED ABOUT 42 YEARS,

36. SMT. ANITA,
W/O PRASANNA KUMAR,
AGED ABOUT 55 YEARS,

BOTH R/AT NO. 6 RAJDHAN ,
GANDHI BAZAR, SURVEYOR STREET,
BASAVANAGUDI
BENGALURU -560 004.

37. SMT. SARIKA BOKARIA,
W/O VIKAS BOKARIA,
AGED ABOUT 39 YEARS,

38. SRI. VIKAS BOKARIA,
S/O LATE RANJITH SINGH BOKARIA,
AGED ABOUT 39 YEARS,

BOTH R/AT NO. 146, 10TH MAIN,
NEAR CHANDRALAYOUT WATER TANK,
BCC LAYOUT, II STAGE,
VIJAYANAGAR, BENGALURU -560 040.

…RESPONDENTS

(BY SRI. K. SRIKANTH PATIL, ADVOCATE FOR C/R1;
SRI. V.S. NARAYANA, ADVOCATE FOR R2;
SRI. BEERESHA, ADVOCATE FOR R3;
SRI J.S. HALASHETTY FOR R14, R23 TO R26;
NOTICE TO R4 IS D/W, V/O DATED 14.02.2024;
NOTICE TO R5-R13, R15-R22,AND R27-R38 ARE D/W,
V.C.O DATED 06.12.2023)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING

TO SET ASIDE ORDER DATED 22/06/2023, PASSED ON I.A.Nos.2, 4 AND 5 FILED UNDER ORDER XXXIX RULE 1 AND 2 R/W SECTION 151 OF CPC, 1908, RESTRAINING THE APPELLANTS FROM ALIENATING, ENCUMBERING OR CHANGING THE NATURE OF THE SUIT SCHEDULE PROPERTY, IN COM. OS.NO.14/2022, ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT RAMANGARA, UNTIL DISPOSAL OF THE SUIT, ETC.

IN COMAP No. 466/2023:

BETWEEN:

SRI. B. SOMASHEKAR,
SON OF LATE BYLAPPA,
AGED ABOUT 48 YEARS,
RESIDING AT NO.6,
8TH CROSS, HOSAHALLI,
WARD NO.124,
BENGALURU-560 040.

...APPELLANT

(BY SRI. K.G. RAGHAVAN, SR. COUNSEL, A/W
SRI. V.S. NARAYANA, ADVOCATE)

AND:

1. M/S. BINDU PROPERTIES,
A PARTNERSHIP FIRM CONSTITUTED
UNDER THE INDIAN PARTNERSHIP ACT,
HAVING ITS OFFICE AT NO. 2,
1ST MAIN, WEST OF CHORD ROAD,
INDUSTRIAL TOWN, RAJAJINAGARA,
BENGALURU-560 079.
REPRESENTED BY ITS
MANAGING PARTNER,
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SON OF ZAVERCHAND N SHAH,
AGED ABOUT 56 YEARS.

2. SRI. K. M. MANJUNATH,
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FLAT NO.504, 16TH CROSS,
19TH MAIN, IDEAL HOMES SOCIETY,
KENCHENAHALLI, RAJARAJESHWARINAGAR,
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5. M/S VAISHNODEVI LUSH GREENS PVT. LTD.,
A PARTNERSHIP FIRM HAVING ITS OFFICE AT
NO.459, 4TH FLOOR, 12TH MAIN,
NEAR: POST OFFICE,
MC LAYOUT, VIJAYANAGAR,
BENGALURU-560 040,
REPT. BY ITS MANAGING DIRECTOR,
SRI. VIMAL JAIN(KATARIA).

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SON OF MAHENDRA KUMAR JAIN,
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ASTER BLOCK, THE GARDEN APARTMENTS,

OPP. ANGALA PARAMESHWARI TEMPLE,
BENGALURU-560 023.

7. SRI. ANIL KUMAR AGARWAL,
SON OF LATE RAM PRATHAP AGARWAL,
AGED ABOUT 52 YEARS,
RESIDING AT NO. H-801,
ETA APARTMENTS,
OPP. BINNY MILL, MAGADI ROAD,
BENGALURU-560 023.

8. SRI. MOHAN LAL,
SON OF AMARA RAM,
AGED ABOUT 40 YEARS,

9. SMT. RADHA,
WIFE OF MOHAN LAL,
AGED ABOUT 37 YEARS,

BOTHE RESIDING AT NO. 49/A,
GARDEN ROAD, NAYANDAHALLI,
BENGALURU-560 039.

10. SMT. SONU AGARWAL,
WIFE OF ANIL KUMAR AGARWAL,
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RESIDING AT
SRI. SHANKARA SAW MILL,
K.M. ROAD, JYOTHINAGARA,
CHIKKAMAGALURU-577 102.

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RESIDING AT NO. 21/1,
HBCS LAYOUT, VIDHYAGIRI LAYOUT,
NAGARABHAVI,
BENGALURU-560 072.

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RESIDING AT NO. 648D, G-4,

RESIDENCY, 19TH MAIN,
IDEAL HOME SOCIETY,
KENCHANAHALLI MAIN ROAD,
R.R. NAGAR,
BENGALURU-560 098.

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SON OF TEJA LAL PATEL,
AGED ABOUT 43 YEARS,
RESIDING AT K. M. ROAD,
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JYOTHINAGARA,
CHIKKAMAGALURU-577 102.

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R/.AT NO. 307, SHIVASHREE GARDEN,
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BENGALURU -560 098

21. SRI. JAGADISH KUMAR,
S/O OF ESHWAR LAL,

AGED AOBUT 39 YEARS,
R/AT NO. 613,
HOME RESIDENCY, 3Rd FLOOR,
KUVEMPU MAIN ROAD,
SHREE VISHWESHRAIAH LAYOUT,
8TH BLOCK, BENGLAURU-560 091.

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G-4 RESIDENCE, 19th MAIN,
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S/O MOHANALAL PATEL
AGED ABOUT 34 YEARS,
RESIDING AT NO. 67A/1,
BELACHIA ROAD, BELAGACHIA,
KOLKATA, WEST BENGAL -700 037.

24. SRI. MOTHILAL KHIMJI PATEL,
S/O KHIMJI .S PATEL,
AGED ABOUT 48 YEARS,
R/AT NO. 21, SHIVA KRUPA,
3rd CROSS, 4th MAIN,
VIDHYAGIRI LAYOUT, NAGARABHAVI,
BENGALURU -560 072.

25. SRI. RAJESH .J PATEL,
S/O JAYANTHI LAL H PATEL,
AGED ABOUT 29 YEARS,

R/AT SHREE SHANKARA SAW MILL,
K M ROAD, JYOTHINAGARA,
CHIKKAMAGALURU -577 102.

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S/O SHAMJI LALDHABAHI PATEL,

AGED ABOUT 36 YEARS,
R/AT NO. 671, MANDIR
10TH MAIN, II STAGE,
HAMPINAGAR,
BENGALURU -560 104.

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S/O SHAMJI LADHABHAI PATEL,
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R/AT NO. 671 MANDIR,
10th MAIN, II STAGE,
HAMPINAGAR, VIJAYANAGAR
BENGALURU -560 104.

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BENGALURU -560 079.

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OFFICE AT NO. 65, 1st MAIN ROAD,
PETECHANNAPPA INDUSTRIAL ESTATE,
KAMAKSHIPALAY,
BENGALURU - 560 079,
REPT. BY ITS DIRECTOR,
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S.O LATE RAM PRATHAP AGARWAL,
R.AT NO. H -801, ETA GARDEN APARTMENT
OPP. BINNI MILL, MAGADI ROAD,
BENGLAURU -560 023.

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S/O CHANDMAL JI BOHRA,
AGED ABOUT 40 YEARS,
R.AT NO. 774/71, 6TH 'B' CROSS,
POST OFFICE ROAD,
SRINAGAR, BENGALURU-560 050.

31. MS. PAVITHRA .C,
D/O M V CHANDRAKANTH,
AGED ABOUT 26 YEARS,
R/AT NO. 1310, 1ST CROSS,
RAMDEV GARDEN,
KACHARAKANAHALLI,
BENGLAURU-560 084.

32. M/S INDRADHANUSH
MASTER BATCHES PVT. LTD.,
HAVING ITS OFFICE AT NO. 94 AND 95,
BAIRAVESHWARA INDUSTRIAL AREA,
ANDARAHALLI MAIN ROAD,
HEGGANAHALLI, BENGLAURU URBAN,
BENGALURU -560 091.
REPT. BY ITS DIRECTOR,
SRI. ANKITH CHOUDHARY,
S/O HARIH OM CHOUDHARY,
AGED ABOUT 38 YEARS.

33. SRI. R. RAMANJANEYA,
S/O LATE RAJANNA,
AGED ABOUT 42 YEARS,
R.AT CHIKKALURU VILLAGE,
RAMOHALLI POST, TAVAREKERE HOBLI,
BENGALURU -560 060.

34. MS. BHOOMIKA K,
D/O KRISHNA G N,
AGED ABOUT 21 YEARS,
R.AT NO. 1011/1354, MATHRU KUTEERA
8TH CROSS, 1ST 'H' MAIN II PHASE,
NEAR GIRINAGAR POLICE STATION,
HOSAKEREHALLI,
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W/O VIKAS BOKARIYA,
AGED ABOUT 39 YEARS,

39. SRI. VIKAS BOKARIYA,
S/O LATE RANJITH SINGH BOKARIYA,
AGED ABOUT 41 YEARS,

BOTH R/AT NO. 146, 10TH MAIN,
NEAR CHANDRALAYOUT WATER TANK,
BCC LAYOUT, II STAGE,
VIJAYANAGAR, BENGALURU -560 040.

…RESPONDENTS

(BY SRI. K. SRIKANTH PATIL, ADVOCATE FOR C/R1,
V/O DATED 14.02.2024 NOTICE TO R2-R39 IS D/W)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13(1-A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO SET ASIDE ORDER DATED 22/06/2023, PASSED ON I.A.NO.3 FILED UNDER ORDER XXXIX RULE 1 AND 2 R/W SECTION 151 OF CPC, 1908, RESTRAINING THE APPELLANTS FROM ALIENATING, ENCUMBERING OR CHANGING THE

NATURE OF THE SUIT SCHEDULE PROPERTY, IN COM.OS.NO.14/2022, ON THE FILE OF THE PRINCIPAL DISTRICT AND SESSIONS JUDGE AT RAMANAGARA AND TO ALLOW THIS APPEAL, AND GRANT SUCH OTHER RELIEF/S, ETC.

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE V KAMESWAR RAO
and
HON'BLE MR JUSTICE S RACHAIAH

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE V KAMESWAR RAO)

These two appeals arises from order dated 22.06.2023 passed by the learned Principal District and Sessions Judge, Ramanagara on four applications being IA Nos. 2 to 5 filed under Order 39 Rule 1 and 2 read with Section 151 of CPC and granted interim relief in favour of Respondent No.1, who is the plaintiff in the suit (the contesting party).

2. At the out set, we may state that, in terms of the order dated 14.02.2024, notice to Respondents No. 2 to 39 in COMAP No.466/2023 has been dispensed with.

3. The submission of Mr. K.G. Raghavan, the learned Senior Counsel appearing for the appellants in COMAP No.466/2023 is, despite applications under Section 8 of the Arbitration and Conciliation Act, 1996 ('Act of 1996' in short) having been filed by the appellants in both the appeals, the learned Judge in Paragraph-98 of the impugned order observes that, no such application has been filed in the suit. The submission of Mr. Raghavan is also, as the applications under Section 8 were in fact filed before the learned Sessions Judge, the application under Order 39 Rule 1 and 2 of CPC could not have been considered for grant of interim order. The interim order having been granted, the same need to be vacated. In support of his submission, Mr. Raghavan has relied upon an order passed by this Court in COMAP No.7/2021 decided on 19.03.2021 to contend that, on identical facts, where despite filing Section 8 application, the Court below has over-looked the same and granted an interim order, the order was set aside by this Court.

4. Mr. Sri. Vikram Huilgol, the learned Senior Counsel appearing for the appellants in COMAP No.283/2023, makes similar submissions. According to him, the appellants in his appeal as well, had filed an application under Section 8 of the Act of 1996, which has been over-looked by the learned Judge.

5. On the other hand, learned counsel appearing for Respondent No.1 would state that, though the learned Sessions Judge was not right in observing that, no application under Section 8 has been filed, but the learned Sessions Judge has taken up the applications filed under Order 39 Rule 1 and 2 of CPC for a decision, because of the directions given by this Court in the Writ Petition No.6038/2023, in that regard. In other words, the learned Sessions Judge was under an obligation to decide the applications under Order 39 Rule 1 and 2 of CPC.

6. Having heard the learned counsel for the parties and perused the record, in view of the fact that the

learned counsel for Respondent No.1 do acknowledge that, applications under Section 8 of the Act were filed by the appellants, the learned Sessions Judge should have considered and decided the same. Having not done that and in fact made an observation in Paragraph 101 in the following manner, the same is clearly unsustainable.

> *"101. As such, in view of the fact that, there is no arbitration agreement between all the parties to the suit, there is no arbitrable dispute between the parties to the suit, the question of referring the matter for arbitration does not arise."*

7. Even otherwise, such an observation could not have been made, when according to him no application under Section 8 has been filed. In other words, there was no occasion for the learned Sessions Judge to make such an observation.

8. At this stage, the learned counsel for the appellants and Respondent No.1 state, appropriate shall be that a direction be given to the learned Sessions Judge

to consider the applications filed under Section 8 of the Act of 1996 by the appellants herein along with the applications filed under Order 39 Rule 1 & 2 of CPC and decide the same afresh as expeditiously as possible, within a time frame.

9. Having noted the above submission, this Court directs that the learned Sessions Judge shall hear the counsel for the parties on the applications filed under Section 8 of the Act of 1996 being IA Nos. 7 & 8 along with the applications being IA Nos. 2 to 5, which are the applications under Order 39 Rule 1 & 2 of CPC on **10.01.2025** or on any date to which the hearing is adjourned, (which shall be immediately thereof) and decide the applications within a period of two weeks effective from 10.01.2025. While deciding the applications, the learned Judge shall not be influenced by any observations made by him in the impugned order dated 22.06.2023.

10. Till such time the aforesaid applications are decided, the interim order passed by the learned Sessions Judge on 10.11.2022, shall continue.

11. All the pleas of the parties are left open to be advanced before the learned Sessions Judge for his consideration and decision thereof.

12. The appeals are disposed of.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

KGR*
List No.: 1 Sl No.: 48