IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE R. NATARAJ

CIVIL REVISION PETITION NO. 472 OF 2023

BETWEEN:

1. SMT. GEETHA
   W/O LATE LOKESH,
   AGED ABOUT 45 YEARS,

2. DHARSHAN,
   S/O OF LATE LOKESH R.,
   AGED ABOUT 24 YEARS,

3. MADAN
   S/O LATE R. LOKESH,
   AGED ABOUT 22 YEARS

   ALL ARE R/AT CHINYA VILLAGE,
   HONAKERE HOBLI, NAGAMANGALA TALUK,
   MANDYA DISTRICT - 571428

...PETITIONERS

(BY SRI. K.L. SREENIVAS, ADVOCATE)

Digitally signed by SUMA
Location: HIGH COURT OF KARNATAKA

AND:

NAGARAJA
S/O SANNAHUCHEEREGOWDA,
AGED ABOUT 44 YEARS,
R/O CHIKKAVEERANAKOPPALU VILLAGE,
HONAKERE HOBLI, NAGAMANGALA TALUK,
MANDYA DISTRICT - 571428

...RESPONDENT

(BY SRI. HAREESH KUMAR N.T., ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC AGAINST THE ORDER DATED 15.02.2023 PASSED ON IA No.IV IN OS No. 95/2019 ON THE FILE OF THE CIVIL JUDGE AND JMFC, NAGAMANGALA, REJECTING THE IA No.IV FILED UNDER ORDER VII

RULE 11 READ WITH SECTION 151 OF CPC FOR REJECTION OF PLAINT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioners have challenged an order dated 15.02.2023 passed by the Civil Judge and JMFC, Nagamangala (henceforth referred to as 'Trial Court') in O.S.No.95/2019 by which, an application filed by the defendants under Order VII Rule 11(a) of CPC was rejected.

2. A suit in O.S.No.95/2019 was filed for recovery of a sum of Rs.4,52,000/- payable by the deceased - R. Lokesh (husband of defendant No.1 and father of defendant Nos.2 and 3). In paragraph No.6 of the plaint relating to the cause of action for filing the suit, it was mentioned as follows:-

> *"6. The cause of action for the suit has arose on 09.04.2018 when the deceased was issued a cheque for Rs.4,50,000/- in favour of plaintiff and on 09.03.2018, when the defendant was died, and also subsequently at Chikkaveeranakoppalu Village, Kasaba Hobli, Nagamangala Taluk, within the jurisdiction of this Hon'ble Court."*

3. In view of the aforesaid statement, the defendants filed an application to reject the plaint on the ground that the deceased - R. Lokesh could not have issued a cheque dated 09.04.2018 when he died on 09.03.2018. The Trial Court after perusing the averments of the plaint, rejected the application on the ground that what was pleaded in the plaint was that a post dated cheque dated 09.04.2018 was drawn by the deceased - R. Lokesh and the plaintiff was instructed to present the cheque on 09.04.2018.

4. Being aggrieved by the said order, the defendants have filed this petition.

5. The learned counsel for the defendants submitted that paragraph No.6 of the plaint clearly disclosed that the cheque in question could not have been issued by the deceased - R. Lokesh and therefore, there was no cause of action for filing the suit.

6. The learned counsel for the plaintiff on the other hand contended that a perusal of the plaint disclosed that it was the deceased - R. Lokesh, who had drawn the cheque in question and had instructed that the cheque may be presented

for encashment on or after 09.04.2018. He therefore, submits that this being a pure question of fact, the plaint cannot be rejected on the ground that the deceased - R. Lokesh died on 09.03.2018 prior to the date marked on the cheque.

7. I have considered the submissions made by the learned counsel for the defendants as well as the learned counsel for the plaintiff.

8. A perusal of the plaint discloses the following:-

> *"The deceased R. Lokesh had also agreed to repay the same within six months from the date of loan. But, after five months, the plaintiff was in financial crisis, he was approached the aforesaid R. Lokesh to clear the aforesaid loan which was borrowed by him. After that, the aforesaid R. Lokesh was issued the cheque bearing its No.373011, dated 09-04-2018 for Rs.4,50,000/- of his S.B. Account No.125501010007974 of Vijaya Bank, Chinya Branch and requested the plaintiff to present the said cheque on or after 09-04-2018 for encashment and adjust towards the loan borrowed by him."*

9. Therefore, this gives an impression that the deceased - R. Lokesh had drawn the cheque in question and

had handed it over to the plaintiff and instructed to present it on or after 09.04.2018. The drawer of the cheque died prior to its encashment. Taking that circumstance into account, the plaint cannot be rejected. In that view of the matter, there is no error committed by the Trial Court in rejecting the application warranting interference of this Court.

10. Consequently, this petition lacks merit and is ***dismissed***.

11. In view of dismissal of the petition, pending I.As., if any, do not survive for consideration and the same stand dismissed.

Sd/-
JUDGE

PMR
List No.: 1 Sl No.: 33