IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE K.SOMASHEKAR

AND

THE HON'BLE MR JUSTICE RAJESH RAI K

REGULAR FIRST APPEAL NO. 1575 OF 2023 (SP)

BETWEEN:

MRS. SAFINAZ
W/O MR SUBHAN KHAN
AGED ABOUT 54 YEARS
R/A NO.40, 7TH CROSS
SOMESHWARANAGAR
1ST BLOCK, JAYANAGAR
BANGALORE-560011.

...APPELLANT

(BY SRI. MOHAMMED SALEHA @ MUKARRAM - ADVOCATE)

Digitally signed by SUMATHY KANNAN
Location: High Court of Karnataka

AND:

MR ARIFULLA KHAN
S/O LATE OBEDULLA KHAN
AGED ABOUT 57 YEARS
R/A SATHNOOR VILLAGE, BAGLUR POST
BANGALORE NORTH TALUK

SINCE DEAD REPRESENTATIVE
BY HIS LEGAL REPRESENTATIVE
SMT. ASMA TABASASSUM
W/O LATE ARIFULLA KHAN
AGED ABOUT 40 YEARS
R/A SATHNOOR VILLAGE, BAGALUR POST
BENGALURU NORTH TALUK
BENGALURU-562149.

...RESPONDENT

(BY SRI. R B SADASIVAPPA - ADVOCATE)

THIS RFA FILED UNDER SECTION 96 R/W ORDER 41 RULE 1 OF CPC PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 03.11.2022 PASSED IN OS No. 6736/2009 ON THE FILE OF THE XI-ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU CITY BY ALOWING THIS APPEAL.

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

CORAM: HON'BLE MR JUSTICE K.SOMASHEKAR
AND
HON'BLE MR JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR JUSTICE K.SOMASHEKAR)

This appeal is directed against the judgment and decree rendered by the Trial Court in O.S.No.6736/2009 dated 03.11.2022 praying to set aside the said judgment and in turn to allow the present appeal.

2. Learned counsel Shri Mohammed Saleha for the appellant and so also the learned counsel Shri R.B. Sadasivappa for respondent, are present before Court physically. In this appeal, an application I.A.No.1/2023 is filed under Section 5 of the Limitation Act seeking to condone the delay of 181 days in filing the appeal. The

reasons stated in the affidavit being found to be justifiable and acceptable, I.A.No.1/2023 is allowed and the delay of 181 days in filing the appeal is condoned.

3. In this appeal, learned counsel for the parties have filed a joint memo, which reads thus:

> "The Appellant and Respondent submit that, the appellant has challenged the Judgment and Decree passed by the learned City Civil & Sessions Judge CCH-08 Bengaluru in O. S. No.6736/2009 dated 03-11- 2022 wherein the trial court has partly decreed the suit refused the relief of specific performance and further directed the Appellant/Defendant, to refund earnest money of Rs.41,00,000/- (Rupees Forty One Lakhs only) to the plaintiff No.1(a) with interest at the rate of 12% per annum, from the date of respective payments, as referred in Para No.4 of the plaint, till realization, accordingly the appellant has deposited the advance amount of sale consideration of Rs.41,00,000/- (Rupees Forty One Lakhs only) the same was acknowledged by the Respondent herein. The appellant has challenged the quantum of interest imposed by the trial court in the instant appeal. The appellant and the respondent has settled the issue involved in the instant appeal amicably with the intervention of the elders and well wishers of the family persons, that in terms of full and final settlement of the interest amount, the respondent has agreed to settle the issue for an amount of

> Rs.58,00,000/- (Rupees Sixty Lakhs only), accordingly the appellant has paid the same to the respondent, a Demand Draft for an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) bearing No.780045 Drawn on Bank of IDFC First Bank K. G. Road Branch, dated 05-10-2024 and another Demand Draft for an amount of Rs.28,00,000/- (Rupees Twenty Eight Lakhs only) bearing No. 780056 Drawn on Bank of IDFC First Bank K. G. Road Branch, dated 28-10-2024 totally a sum of Rs.58,00,000/- (Rupees Fifty Eight Lakhs only) has been given to the respondent towards full and final settlement of Interest amount, a copy of the Demand Drafts herewith enclosed for kind perusal of this Hon'ble Court in view of the same this appeal may kindly be disposed off recording this memo, and it is further prayed before this Hon'ble Court to direct the registry to return the Court fees Deposited by the appellant in the ends of justice and equity. Hence this Memo."

4. The appellant as well as the respondent being the parties, are present before Court physically and they have subscribed their signatures to the order-sheet as well as the joint memo filed before Court. Learned counsel for both the parties pray that this joint memo be taken on record and the appeal be dismissed as withdrawn and the Registry be directed to refund the Court fee paid in the appeal.

5. The joint memo dated 30.10.2024 is taken on record. Keeping in view the joint memo as well as the submission of the learned counsel for the parties, the appeal is dismissed as withdrawn, as sought for.

6. In view of withdrawal of this appeal, the Registry is directed to refund the Court fee paid to the appellant, on due identification.

SD/-
(K.SOMASHEKAR)
JUDGE

SD/-
(RAJESH RAI K)
JUDGE

KS