

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF DECEMBER, 2023**

**BEFORE**

**THE HON'BLE MR.JUSTICE S.G.PANDIT**

**WRIT PETITION NO.17363/2023 (GM-CPC)**

**BETWEEN:**

1. SHIVA PRAKASH GIRISH  
SON OF SRI VIRUPAKSHIAH  
SHIVAPRAKASH  
AGED ABOUT 45 YEARS,  
RESIDING AT NO.348,  
12<sup>TH</sup> MAIN ROAD, 4<sup>TH</sup> CROSS,  
HSR LAYOUT, 5<sup>TH</sup> SECTOR  
BENGALURU - 5601012
2. VENKATA SURESH REDDY  
BIRUDAVOLU  
SON OF VENKU REDDY  
BIRUDAVOLU  
AGED ABOUT 50 YEARS  
RESIDING AT NO.269,  
KHB COLONY, KORAMANGALA  
BENGALURU - 560 095.
3. VALLERU SARITHA  
DAUGHTER OF VALLERU  
BALACHANDRA NAIDU,  
AGED ABOUT 40 YEARS  
RESIDING AT NO.255,  
2<sup>ND</sup> FLOOR, 5<sup>TH</sup> MAIN  
M.S. RAMAIAH CITY  
NEAR CORPORATION BANK,  
J.P.NAGAR, 8<sup>TH</sup> PHASE  
BANNURUGATTA ROAD,  
BENGALURU - 560 076.

4. VENUGOPALACHARY MUNAGANTI  
S/O VIRUPACHARY MUNAGANTI  
AGED ABOUT 45 YEARS  
RESIDING AT NO.23-1333,  
TEKKEMITTA, BESIDE OLD EXCISE  
OFFICE, TEKKEMITTA  
NELLORE, DAGAMITTA  
NELLORE, ANDHRA PRADESH – 524 003
  
5. GORTHI VIDYA SAGAR  
SON OF GORTHI SATYAMURTHY  
AGED ABOUT 47 YEARS  
RESIDING AT NO.78,  
NEW NO.5, NATARAJAN STREET  
DHANALAKSHMI COLONY  
VADAPALANI, CHENNAI  
TAMIL NADU - 600 026.
  
6. SMT. DIVYA GIRISH  
W/O SHIVA PRAKASH GIRISH  
AGED ABOUT 44 YEARS  
RESIDING AT NO.348,  
12<sup>TH</sup> MAIN ROAD, 4<sup>TH</sup> CROSS,  
HSR LAYOUT, 5<sup>TH</sup> SECTOR,  
BENGALURU – 560 1012

...PETITIONERS

(BY SRI: X.M. JOSEPH, ADVOCATE)

**AND:**

1. SRI A LIGOURY D'MELLO  
AGED ABOUT 62 YEARS  
S/O LATE SALVODOR D'MELLO  
RESIDING AT P.O.BOX.57  
P.C.328, TECHNOFIT TRADING  
LL.C., AL RUMIAS, BARKHA,  
SULANTATE OF OMAN
  
2. SMT MARY MARGARET D'MELLO  
AGED ABOUT 54 YEARS

W/O SRI A LIGOURY D'MELLO  
RESIDING AT P.O.BOX.57  
P.C.328, TECHNOFIT TRADING  
LL.C., AL RUMIAS, BARKHA,  
SULANTATE OF OMAN

....RESPONDENTS

(BY SRI: P.N. MANMOHAN, ADVOCATE FOR C/R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS AND PROCEEDINGS OF THE COMMERCIAL ORIGINAL SUIT NO.352 OF 2020 PENDING ON THE FILE OF THE LEARNED LXXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-90) AND SET ASIDE ANNEXURE-F, THE ORDER DTD27.06.2023 PASSED BY THE LEARNED LXXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-90) IN COMMERCIAL O.S.NO.352 OF 2022 AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 14/12/2023 COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioners, defendants in Com.O.S.No.352/2020 on the file of LXXXIX Additional City Civil and Sessions Judge, Bengaluru are before this Court, aggrieved by order dated 27.06.2023 rejecting I.A.No.14 filed under Sections 148 and 151 of CPC

praying to reject/discard the affidavit evidence of plaintiff tendered through plaintiff No.2; and to declare the act of respondents i.e. plaintiffs in introducing additional documents through Annexure-F (I.A.No.13 dated 20.03.2023) without leave of the Court as illegal.

2. Heard learned counsel Sri.X.M.Joseph for petitioners/defendants and learned counsel Sri.P.N. Manmohan for respondents/plaintiffs. Perused the writ petition papers.

3. Learned counsel for the petitioners would submit that the suit of the respondents/plaintiffs is for a judgment and decree directing defendants No.1 to 11 jointly and severally pay a sum of Rs.7,69,36,876/- with interest at the rate of 12% p.a. and other sums along with damages as claimed in the suit. On 23.01.2023, when the suit was set down for plaintiffs' evidence, the learned counsel for respondent/plaintiffs filed an

affidavit evidence dated 18.01.2023 of plaintiff No.2 said to have been sworn before the Assistant Consular Officer, Embassy of India, Muscat. Thereafter, on 20.03.2023, the plaintiffs/respondents herein filed I.A.No.13 to produce original/certified copies of documents. On 20.03.2023, plaintiff No.2/P.W.1 appeared before the Court and has sworn before the Presiding Officer, thereafter marked the documents in her further examination-in-chief. When the suit was set down for cross-examination, on 03.06.2023, the petitioners/defendants filed I.A.No.14 under Sections 148 and 151 of CPC to reject/discard the affidavit evidence of plaintiff tendered through plaintiff No.2. The plaintiffs filed their objections to the said I.A. and prayed to dismiss I.A.No.14. The trial Court, under impugned order dated 27.06.2023 dismissed I.A.No.14 rejecting contentions of the petitioners/defendants.

4. Learned counsel Sri.X.M.Joseph taking through the impugned order would submit that the trial Court committed a grave error in rejecting the application and failed to appreciate the contentions raised by petitioners/defendants. Learned counsel would submit that the affidavit evidence filed before the Court is not a sworn affidavit. Further elaborating his arguments, learned counsel would submit that the affidavit evidence filed cannot be considered as affidavit in terms of Section 139 of the Code of Civil Procedure. Learned counsel would submit that the affidavit shall be on oath or affirmation and such oath or affirmation shall be made before the person authorized to administer oath or affirmation. Learned counsel referring to the affidavit would submit that though the affidavit was signed before the Assistant Consular Officer, Embassy of India, Muscat, it was not sworn.

5. Learned counsel referring to the decision in **RASIKLAL MANIKCHAND DHARIWAL v/s M.S.S. FOOD PRODUCTS** reported in **(2012) 2 SCC 196** would submit that the Hon'ble Apex Court has made it clear that, where the examination-in-chief of a witness is produced in the form of affidavit, such affidavit is always sworn before the Oath Commissioner or the Notary or Judicial Officer or any other person competent to administer oath. It is submitted that since the affidavit of plaintiff No.2 filed before the Court on 23.01.2023 is not a sworn affidavit, the Court could not have accepted the same.

6. Learned counsel referring to Section 139 of CPC would submit that any Officer or authority stated there under could administer oath to the deponent and such administered oath to a deponent could be considered as affidavit under the Code. It is submitted that since the affidavit filed by plaintiff No.2 is not on oath

administered by any one of the authorities stated therein, the Court could not have accepted such an affidavit.

7. In respect of production of documents under I.A.No.13, learned counsel would submit that the documents produced along with I.A.No.13 are not documents produced along with plaint and as such, the plaintiffs could not have filed or introduced documents stated in I.A.No.13. Thus, learned counsel would submit that the trial Court committed an error in accepting the documents produced along with I.A.No.13 and in permitting the respondents/plaintiffs to mark those documents. Thus, he prays for allowing the writ petition.

8. Per contra, learned counsel Sri.P.N.Manmohan would support the impugned order passed by the trial Court and would submit that assuming for a moment that, the affidavit is not sworn before the authorized



person, subsequently P.W.1/plaintiff No.2 entered the witness box and has sworn before the Presiding Officer on 20.03.2023. Further, he invites attention of this Court to Annexure-G to submit that P.W.1 verified and confirmed the affidavit in lieu of examination-in-chief on entering witness box and stated that contents of the affidavit are true to the best of her knowledge and information. It is submitted that when the witness enters witness box and confirms the contents of the affidavit on oath, if there is any defect in the affidavit, the same would get cured. In that regard, learned counsel Sri.Manmohan places reliance on Section 7 of the Oaths Act, 1969. Learned counsel would also place reliance on the decision of Bombay High Court reported in **(2010) 1 Mh.L.J. 397 MISCELLANY MARKETING PVT. LTD. v/s SUN-N-SAND HOTEL PVT. LTD.** (A.S.Oka J., as he then was) to submit that when the witness stepped into witness box and on oath

he states that the contents of the affidavit in lieu of examination-in-chief were correct, what is stated in the affidavit becomes examination-in-chief and forms part of evidence of the said witness. The defects on oath or affirmation if any, gets cured.

9. Learned counsel for the respondents/plaintiffs with regard I.A.No.13 would submit that documents produced along with I.A.No.13 are original documents of Xerox copies which were produced along with the plaint. Therefore, justifies the action of the trial Court in permitting marking of those documents on 20.03.2023. Thus, he prays for dismissal of the writ petition.

10. Having heard the learned counsel for the parties and on perusal of the writ petition papers, I am of the view that the petitioners/defendants have failed to make out any ground to interfere with the impugned order. Moreover, the impugned order is neither perverse nor

suffers from any material irregularity so as to warrant interference under Article 227 of the Constitution of India.

11. Under Article 227 of the Constitution of India, the High Court would not sit in appeal over the impugned orders and would not interfere with every order. High Court exercises its supervisory jurisdiction under Article 227 of the Constitution of India only if it is shown that the impugned order is allowed to stand, would result in great prejudice and miscarriage of justice.

12. Hon'ble Apex Court in **RASIKLAL MANIKCHAND DHARIWAL** (supra) while considering Order XVIII Rules 2, 4 and 5 of CPC has held that where the examination-in-chief of a witness is produced in the form of an affidavit, such affidavit is always sworn before the Oath

Commissioner or the Notary or Judicial Officer or any other person competent to administer oath.

13. Plaintiff No.2 filed affidavit evidence as P.W.1 on 23.01.2023 which is placed on record at Annexure-E to the writ petition. A perusal of the affidavit, it would indicate that the deponent solemnly stated on oath before the Assistant Consular Officer, Embassy of India, Muscat on 18.01.2023. Admittedly, the affidavit is not sworn before any of the authorities as prescribed under Section 139 of CPC nor before the authority as authorized under the Diplomatic And Consular Officers (Oaths And Fees) Act, 1948. But the defect of non-administering oath to the deponent of the affidavit dated 18.01.2023 (i.e. P.W.2) is cured when he entered the witness box and affirmed the contents of the affidavit on taking oath before the Presiding Officer on 20.03.2023.

14. The High Court of Bombay in the above referred decision in **MISCELLANY MARKING PVT. LTD.** (supra) was considering identical fact situation wherein also affidavit of examination-in-chief was filed, which was not sworn and affirmed before any Officer. The Bombay High Court on consideration of the contentions, held that defects of non-signing and not getting the said affidavit affirmed before the learned trial Judge or before any other officer empowered to administer oath stand cured by the examination on oath of the said witness. The relevant paragraphs 8 and 9 read as follows:

*"8. It is always stated that the procedure is a handmaid of justice. In the present case, the witness concerned stepped into witness box and on oath he stated that the contents of the affidavit in lieu of examination-in-chief were true and correct. The learned trial Judge as well as the parties proceeded on the footing that the affidavit tendered by the*

*witness was duly affirmed before the concerned officer. As held by this Court in the case of FDC, such affidavit can be treated as an evidence only after the examination of the witness is made on oath and the witness deposes that the contents of the affidavit are true and correct. In the examination on oath of the said witness recorded before the Court, he was shown the said affidavit and he stated that the contents thereof were true and correct. In view of the recording of the examination-in-chief of the witness, what is stated in the affidavit tendered on 11th April, 2009 becomes the examination-in-chief and forms part of the evidence of the said witness. The defects of non-signing and not getting the said affidavit affirmed before the learned trial Judge or before any other officer empowered to administer oath stand cured by the examination on oath of the said witness on 11th April, 2008. In this connection, it will be necessary to refer section 7 of Oath Act which reads thus:*

*"7. Proceedings and evidence not invalidated by omission of oath or irregularity. — No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth."*

*9. In a case where an affidavit in lieu of examination-in-chief of a witness taken on record by the Court is found to be defective on account of failure to affirm it before the concerned officer, by exercising inherent power under section 151 of the said Code, the trial Court can always allow the defect to be cured by permitting the affirmation to be made subsequently. In the present case, by virtue of examination-in-chief of the said*

*witness on oath before the Court and by virtue of the statement on oath that what was stated in the affidavit is true and correct, it cannot be said that the said affidavit continues to be defective by virtue of failure of the witness to affirm the same before an officer who is empowered to administer the oath."*

The above decision makes it abundantly clear that defect of non-affirmation on oath would get cured, once the witness enters the witness box and on oath states that contents of the affidavit in lieu of examination-in-chief were true and correct.

15. Section 7 of the Oaths Act 1969 reads as follows:

**"7. Proceedings and evidence not invalidated by omission of oath or irregularity:-** *No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which*



*it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth."*

16. Hon'ble Apex Court in the case of **STATE OF RAJASTHAN VS. DARSHAN SINGH ALIAS DARSHAN LAL** reported in **(2012) 5 SCC 789** while considering Sections 119 and 118 of the Evidence Act, 1872 has explained effect of Section 7 of the Oaths Act, 1969. Relevant paragraph 24 reads as follows:

**24.** *This Court in Rameshwar v. State of Rajasthan [1951 SCC 1213 : AIR 1952 SC 54 : 1952 Cri LJ 547] has categorically held that the main purpose of administering of oath is to render persons who give false evidence liable to prosecution and further to bring home to the witness the solemnity of the occasion and to impress upon him the duty of speaking the truth, further such matters only*

*touch credibility and not admissibility. However, in view of the provisions of Section 7 of the Oaths Act, 1969, the omission of administration of oath or affirmation does not invalidate any evidence.*

17. In terms of the above provision, in the instant case, any defect in the affidavit dated 18.01.2023 filed before the Court on 20.01.2023 stands cured by examination on oath and on affirmation of the contents of affidavit on 20.03.2023 before the Court by P.W.1.

18. With regard to production of documents under I.A.No.13, learned counsel for the petitioners/defendants submitted that the trial Court could not have permitted the respondents/plaintiffs to produce the documents stated therein. The petitioners/defendants have not pointed out which are the documents that are not produced earlier and produced along with I.A.No.13. The affidavit enclosed to I.A.No.13 makes it clear that

the copies of documents were produced at the time of filing the plaint as required under the Commercial Courts Act and certified copies of documents are produced. Further, the affidavit also discloses that some of the documents were marked in PCR No.12156/2020 which is numbered as C.C.No.30214/2022 and obtaining certified copy of those documents, they have produced along with I.A.No.13. I do not find any error in accepting the documents enclosed to I.A.No.13.

19. For the reasons recorded above, there is no merit in the writ petition and accordingly, the writ petition stands rejected.

***Sd/-***  
**JUDGE**

mpk/-\*  
CT:bms