



IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4120 OF 2024

**ANISH M RAWTHER @
ANEES MOHAMMED RAWTHER** **APPELLANT**

VERSUS

HAFEEZ UR RAHMAN & ORS. ...**RESPONDENTS**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

This appeal has been preferred by the appellant/defendant challenging the Order passed by the High Court of Karnataka on 21st March 2022 in Writ Petition No. 10975 of 2020 (GM-CPC) whereby the High Court allowed the writ petition and set aside the Order dated 07th March 2020 passed by the Trial Court in Com. OS No. 1026 of 2018 and further directed the Trial Court to accept the memo dated 14th November 2019 which was submitted by the respondents/plaintiffs and pass appropriate orders accordingly.

2. The brief facts, necessary for disposal of this Civil Appeal are that the respondents/plaintiffs preferred a suit under Order XXXVII of Code of Civil Procedure, 1908 (henceforth 'CPC') against the appellants/defendants for recovery of Rs. 1,04,16,576/- with interest. The appellants/defendants entered appearance and filed application seeking leave to defend which was allowed by the Trial Court on 19th June 2019 with a direction to the appellants/defendants to deposit 50% of the suit claim. The said order was challenged before the High Court in Writ Petition No. 28349 of 2019 which was dismissed on 08th August 2019 against which an SLP (C) No. 20626 of 2019 was preferred by the appellants/defendants which came to be dismissed on 06th September 2019, by passing the following order:-

"We are not inclined to interfere with the impugned order passed by the High Court.

The special leave petition, is accordingly, dismissed.

However, it is open for the petitioners to approach the High Court within four weeks from today for variation of the order satisfying the High Court that he can provide adequate security in terms of the orders of the High Court."

3. Despite the above order passed by this Court, the appellants/defendants did not approach the High Court for variation of the order as permitted by this Court.

4. When the matter stood thus, the respondent/plaintiff filed memo dated 14th November 2019, requesting the Trial Court to decree the suit in terms of Order XXXVII Rule 3(6)(b) of the CPC. The Trial Court after considering the material on record, including the objections by the appellant/defendant rejected the memo vide order dated 07th March 2020. This order was assailed by the respondent/plaintiff before the High Court which has been allowed under the impugned order simultaneously directing the Trial Court to accept the memo and pass appropriate orders accordingly.

5. The appellants/defendants have argued that in view of Section 14 of the Insolvency and Bankruptcy Code, 2016 (henceforth 'IBC'), the moratorium has become operational, therefore, the suit cannot proceed. This argument was not accepted by the High Court and under the impugned order, the Trial Court was directed to accept the memo and pass

appropriate orders. It is important to notice that this Court has passed an order on 01st December 2023 staying the impugned order, however, much prior to the interim order of this Court, the suit itself was decided finally by passing a decree on 20th April 2023. It is not brought to our notice that the said decree has been challenged any further by the defendants. Thus, for the present, the suit is not pending, therefore, the present appeal which arises out of an interim order passed by the Trial Court during pendency of the suit, has been rendered infructuous.

6. The Civil Appeal is, accordingly, dismissed as infructuous.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASHANT KUMAR MISHRA)

NEW DELHI;
JUNE 14, 2024.