

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU****DATED THIS THE 14TH DAY OF FEBRUARY, 2024****BEFORE****THE HON'BLE MR JUSTICE S.R.KRISHNA KUMAR****WRIT PETITION NO.8324 OF 2023 (GM-CPC)****BETWEEN:**

1. M/S CAVALRY ENTERTAINMENT LLP
A PARTNERSHIP FIRM
UNREGISTERED PARTNERSHIP FIRM,
HAVING REGISTERED OFFICE
AT NO.721, 1ST FLOOR,
10TH CROSS, PATEL LAYOUT,
BALAGERE ROAD, VARTHUR,
BANGALORE 560087
REP BY ITS MANAGING PARTNER
2. MR. HARI NATHA RAO BALAJI RAO ENGLI
S/O HARANADHA RAO E
AGED ABOUT 44 YEARS,
R/AT NO.163/4,
1ST FLOOR, 5TH CROSS,
K.S.V.K SCHOOL ROAD,
HAGADHUR VILLAGE,
BANGALORE 560066

...PETITIONERS

(BY SRI.CHANDRASHEKARA K., ADVOCATE)

**AND:**

1. SRI VEEREGOWDA
S/O HUCHANNA
AGED ABOUT 49 YEARS,
R/AT CANTEEN OWNER,
M/S VAIBHAV CINEMA THEATRE,
SANJAYNAGAR,
BANGALORE - 560094

ALSO R/AT
NO.22, COURT ROAD,



ROJIPURA, DODDABALLAPURA TOWN,
BENGALURU RURAL,
KARNATAKA - 561203

2. SRI SHEKAR M R
S/O GUNGULU
AGED ABOUT 48 YEARS
R/AT SY NO.84,
GREEN FIELD HUB, BLOCK,
SEEGEHALLI ROAD, KADUGODI
BENGALURU 560067

...RESPONDENTS

(BY SRI. M.VEERABHADRAIAH, ADVOCATE FOR R1;
SRI. PAVAN KUMAR G., ADVOCATE FOR R2)

THIS WP FILED UNDER ARTICLE 227 OF CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 03.03.2023 PASSED ON AN APPLICATION UNDER ORDER 21 RULE 58 OF CPC FILED IN EX.PETITION NO.259/2022 PASSED BY THE LEARNED CITY CIVIL AND SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT) BENGALURU CITY AT BENGALURU AND ETC.

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

ORDER

This petition by the obstructor / objector in Com.Ex.No.259/2022 is directed against the impugned order dated 03.03.2023 passed on I.A.No.1 by the LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City, whereby the said application filed by the petitioners / obstructors / objectors under Order 21 Rule 58 CPC was dismissed by the Trial Court.



2. Heard learned counsel for the petitioners and learned counsel for the respondents and perused the material on record.

3. A perusal of the material on record will indicate that respondent No.1 – decree holder instituted the aforesaid execution proceedings against respondent No.2 – judgment debtor to enforce and implement the judgment and decree dated 19.02.2022 passed in Com.O.S.No.5637/2019. During pendency of the proceedings, respondent No.1 obtained attachment of the movables on the ground that the same belong to respondent No.2 – judgment debtor. Subsequently, petitioners / objectors / obstructors filed the instant application – I.A.No.1 claiming that it was a limited liability partnership firm, which owned and possessed the said movables and that they had independent right over the movables attached by respondent No.1 – decree holder.

4. On the other hand, respondent No.1 – decree holder contended that the movables so attached belongs absolutely to respondent No.2 – judgment debtor and consequently, the question of entertaining the claim of the petitioners as third party objectors / obstructors would not arise. It was also contended that petitioners have no *locus standi* to file the application much less invoking the



provisions contained under Order 21 Rule 57 CPC. After hearing the parties, the Trial Court came to the conclusion that petitioners did not have independent right nor *locus standi* to file the application and accordingly, proceeded to dismiss the application by passing the impugned order, which is assailed in the present petition.

5. In addition to reiterating the various contentions urged in the memorandum of petition and referring to the material on record, learned counsel for the petitioners submits that since there are disputed questions of fact and law and several contentious issues between the parties that arise for consideration, it was incumbent upon the Trial Court to conduct enquiry by permitting both the parties to adduce oral and documentary evidence and Trial Court has committed an error in summarily dismissing the application without conducting / holding enquiry as held by this Court in the case of ***Technocon Builders Vs. K. Sudarshana and others*** – ***W.P.Nos.58838/2013 and 3291-92/2014 dated 04.01.2016***. It is therefore contended that the impugned order passed by the Trial Court deserves to be set aside and matter



remitted back to the Trial Court for reconsideration afresh in accordance with law.

6. Per contra, learned counsel for respondent No.1 would support the impugned order and submits that there is no merit in the petition and that the same is liable to be dismissed. It is also submitted that petitioners being an unregistered limited liability partnership firms does not have *locus standi* either to prefer the present petition or to maintain the instant application before the Trial Court.

7. A perusal of the material on record will indicate that there is a serious dispute as regards ownership of attached movables, which are subject matter of the application filed by the petitioners under Order 21 Rule 58 CPC. The dispute between the parties and rival contentions makes it necessary for conducting an enquiry by permitting both sides to adduce both oral and documentary evidence. Under these circumstances, I am of the view that the impugned order passed by the Trial Court deserves to be set aside and matter remitted back to the Trial Court for reconsideration afresh in accordance with law.



8. In the result, I pass the following:

ORDER

- (i) The petition is hereby **allowed**.
- (ii) The impugned order dated 03.03.2023 passed on I.A.No.1 in Com.Ex.No.259/2022 by the LXXXVIII Addl. City Civil & Sessions Judge, (Exclusive Commercial Court), Bengaluru City, is hereby set aside.
- (iii) Matter is remitted back to the Trial Court for reconsideration afresh in accordance with law.
- (iv) The Trial Court is directed to conduct necessary enquiry and dispose of application – I.A.No.I within a period of three months from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

SV
List No.: 2 SI No.: 22