

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 12419 OF 2022 (GM-CPC)

BETWEEN:

SRI C.N.SATHYANARAYANA SETTY
S/O.SRI C.R.NARASIMHA SETTY
AGED ABOUT 72 YEARS
R/AT NO.321, 'SUMUKA'
3RD 'A' CROSS, 2ND BLOCK
3RD STAGE, BASAVESHWARANAGAR
BENGALURU - 560 079

...PETITIONER

(BY SRI M.VEERABHADRAIAH, ADVOCATE)

AND:

1. M/S.GALLARI CREATIONS PVT.LTD.
A COMPANY REGISTERED UNDER THE
PROVISIONS OF COMPANIES ACT, 1856
NO.99/49, 2ND MAIN ROAD
RAJAJINAGAR INDUSTRIAL TOWN
BENGALURU - 560 010
REP. BY ITS DIRECTOR
2. SRI AJIT T.KAMAT
S/O.SRI T.M.KAMAT
AGED ABOUT 50 YEARS
DIRECTOR OF
M/S.GALLARI CREATIONS
PRIVATE LIMITED
NO.99/49, 2ND MAIN ROAD
RAJAJINAGAR INDUSTRIAL TOWN
BENGALURU - 560 010

3. SMT.AKSHATA T.KAMAT
W/O.SRI AJIT T.KAMAT
AGED ABOUT 49 YEARS
DIRECTOR OF
M/S.GALLARI CREATIONS
PRIVATE LIMITED
NO.99/49, 2ND MAIN ROAD
RAJAJINAGAR INDUSTRIAL TOWN
BENGALURU - 560 010 ...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DATED 15.03.2022 PASSED IN MISC.NO.21/2019 BY LXXXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH NO.90) ON THE APPLICATION FILED UNDER ORDER III RULE 2 READ WITH SECTION 151 OF CPC AS PER ANNEXURE-A AND ETC.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The captioned writ petition is filed by the respondent in Misc.Petition No.21/2019.

2. The present respondents herein have filed the miscellaneous petition seeking to set aside the judgment and decree dated 17.09.2018 passed in O.S.No.1449/2018 wherein the present respondents are directed to quit and handover vacant possession and also pay the arrears of rent. The said order is challenged by

the respondents by filing a miscellaneous petition. In the miscellaneous proceedings, the respondent-Company intends to lead evidence by authorizing its Manager to lead evidence on behalf of the Company. The present petitioner, who is the decreeholder has resisted the said miscellaneous petition by filing objections. The present petitioner's contention is that the witness who is not cited is examined on behalf of respondent-Company who is not competent to depose on behalf of the Company. It is also contended that the witness who is now authorised pursuant to the Board resolution dated 03.01.2022, is not approved by the Company Secretary in terms of law and therefore, the present petitioner contended that he is not competent to depose on behalf of the respondent-Company and further objection was raised by the petitioner that witness can depose only on behalf of respondent No.1-Company and not on behalf of respondent Nos.2 and 3.

3. Learned Judge having examined the rival contentions has allowed the application, thereby permitting respondent-Company to examine its authorised officer to lead evidence on behalf of respondent-Company.

4. Heard learned counsel for petitioner. Perused the order under challenge.

5. The respondents have filed an application under the provisions of Order III Rule 2 read with Section 151 of CPC seeking permission to permit one Mr.Suresh C.Nathani working as a General Manager of petitioner No.1-Company to represent and act on behalf of petitioner No.1-Company and their Directors i.e. petitioner Nos.2 and 3 and consequently, permit him to lead oral evidence in support of the averments made in the miscellaneous petition. The respondent-Company in the affidavit has averred at para-3 that the Board has resolved to authorize the above said witness to conduct the case on behalf of respondent-Company. The

respondents have also referred to Board resolution dated 03.01.2022. The contention of present petitioner herein that the Board resolution authorizing the above said witness to depose on behalf of respondent No.1-Company cannot be extended even on behalf of respondent Nos.2 and 3 for want of individual authorization is unfounded and misconceived. Respondent Nos.2 and 3 are admittedly the Directors. Therefore, the authorization given under the Board resolution would invariably authorise the witness to depose on behalf of respondent No.1-Company as well as on behalf of the Directors i.e. respondent No.2 and 3. If the witness is shown to be an authorised by the Company and if he has sworn to an affidavit indicating that there is an authorisation, the application deserves to be allowed. The defence set up by the petitioner that he is not competent to depose on behalf of respondent No.1-Company, is a matter only to be decided after he is tested in cross-examination. Therefore, the present

petitioner cannot dictate as to whom respondent No.1-Company has to examine. Whether the oral evidence of witness would come to the aid of respondent-Company or not is a matter of trial and whether his evidence is defective for want of any authorization under any law is also a matter to be considered only after conclusion of his cross-examination. Therefore, I do not find any error in order under challenge. Petition is ***dismissed***. All contentions are kept open.

**Sd/-
JUDGE**

LB