IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF FEBRUARY, 2025

PRESENT

THE HON'BLE MR JUSTICE V KAMESWAR RAO

AND

THE HON'BLE MR JUSTICE S RACHAIAH

COMMERCIAL APPEAL NO. 143 OF 2024

BETWEEN:

M/S URBANSCAPE INTERIORS
A PROPRIETORSHIP CONCERN
HAVING ITS REGISTERED OFFICE AT
NO.46, MUNIREDDY LAYOUT,
CHELEKERE, KALYANA NAGAR POST
BENGALURU – 560 043.
REPRESENTED BY ITS PROPRIETOR,
SRI. VENUGOPAL PILLAI
AGED ABOUT 59 YEARS,
S/O KUNJAN PILLAI

…APPELLANT

(BY SMT. DEEPA V, ADVOCATE)

AND:

M/S GUMMAPU ENTERPRISES
A REGISTERED PARTNERSHIP FIRM
HAVING ITS REGISTERED OFFICE AT
BLOCK NO.18, FLAT NO.601,
RAIN TREE PARK, MALAYASIAN TOWNSHIP
KUKATAPALLY, HYDERABAD – 560 072.
REPRESENTED BY ITS MANAGING PARTNER
SRI. G. CHIRANJEEVI

…RESPONDENT

(BY SRI. K N MOHAN, ADVOCATE FOR
SRI. S VENKATESH SHASTRY, ADVOCATE)

Digitally signed by NARAYANA UMA
Location: HIGH COURT OF KARNATAKA

THE COMAP IS FILED UNDER SECTION 13(1) AND (1A) OF THE COMMERCIAL COURTS ACT, 2015, PRAYING TO CALL FOR RECORDS AND SET ASIDE THE JUDGMENT AND DECREE DATED 28.11.2022 PASSED BY LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT) AT BENGALURU CITY, (CCH 89).

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

CORAM: HON'BLE MR JUSTICE V KAMESWAR RAO
and
HON'BLE MR JUSTICE S RACHAIAH

ORAL JUDGMENT
(PER: HON'BLE MR JUSTICE V KAMESWAR RAO)

1. This appeal filed under Sections 13(1) and 1(A) of the Commercial Courts Act, 2015 lays a challenge to the judgment and decree dated 28.11.2022 in Com.O.S No.465/2022 which is a commercial suit filed by the respondent herein against the appellant for recovery of Rs.7,11,133/- with interest. The suit has been decreed in favour of the respondent herein in terms of the paragraph No.24 of the order of the Sessions Judge in the following manner:-

> *"24. ISSUE NO.4: In view of my findings to the issue No.1 to 3 as stated above I proceed to pass the following:*
>
> ***ORDER***
>
> *The suit of the plaintiffs is decreed with cost.*
>
> *The defendant is hereby directed to pay decreetal amount of Rs.7,11,133/-- with interest at the rate of 18% from January 2020 till it's realization."*

2. The appeal is accompanied by an application seeking condonation of delay of 434 days in filing the appeal. The application and affidavit seeking condonation of delay reads as under:

"APPLICATION UNDER SECTION 5 OF THE LIMITATION ACT,

That for the reasons stated in the accompanying affidavit the appellant in the above case prays that this Hon'ble Court may be pleased to condone the delay of 434 days in filing the appeal in the interest of justice and equity.

AFFIDAVIT

I. Sri Venugopal Pillai, I am the proprietor of urban space Interiors, aged about 59 years, s/o Kunjan Pittai, residing at No.46, Munireddy Layout, Chelekere, Kalyana Nagar Post, Bengaluru – 560 043, do hereby solemnly swear and state on oath as follows:

1. *I am the authorised representative of the Appellant entity in the above appeal and I am conversant with the facts of the case. I am competent to swear to the contents of this affidavit.*
2. *I submit that in order to avoid the repetition of facts the grounds urged in my appeal may kindly be read as part and parcel of this affidavit.*

3. I state that the above appeal is filed by me challenging the judgment and decree dated 28.11.2022 passed by the Learned Judge Principal Senior Civil Judge, Mangalore before the Hon'ble Trial Court under Com. OS. No. 465/2022 in decreeing the suit in favour of the Respondent herein. The judgment passed by the Commercial Court is wholly illegal and not sustainable for the various grounds urged in the memorandum of first appeal.

4. I further submit that I was undergoing personal and business hardships during and after the COVID 19 pandemic. I was also not aware of the limitation aspects in filing the appeal. All these problems jointly contributed to delay.

5. The delay in filing the appeal is neither intentional nor deliberate but for the bona fide reasons stated above. If the delay of filing this appeal is not condoned, I will be put to great hardship and loss. Therefore the delay in filing the appeal may kindly be condoned.

Wherefore it is most humbly and respectfully prayed before this Hon'ble Court that the above application may kindly be allowed and the delay in filing the appeal may kindly be condoned in the interest of justice and equity."

3. The prescribed period of limitation being 60 days in filing the appeal and in view of the position of law laid down by the Hon'ble Supreme Court in the case of ***Govt. of***

Maharashtra (Water Resources Department) Rep. by Executive Engineer -Vs.- Borse Bros. Engineers & Contractors (P) Ltd. [(2021) 6 SCC 460] wherein in paragraph No.63, the Supreme Court has stated as under; the delay cannot be condoned.

> *"63. Given the aforesaid and the object of speedy disposal sought to be achieved both under the Arbitration Act and the Commercial Courts Act, for appeals filed under Section 37 of the Arbitration Act that are governed by Articles 116 and 117 of the Limitation Act or Section 13(1-A) of the Commercial Courts Act, a delay beyond 90 days, 30 days or 60 days, respectively, is to be condoned by way of exception and not by way of rule. In a fit case in which a party has otherwise acted bona fide and not in a negligent manner, a short delay beyond such period can, in the discretion of the court, be condoned, always bearing in mind that the other side of the picture is that the opposite party may have acquired both in equity and justice, what may now be lost by the first party's inaction, negligence or laches."*

4. The delay of 434 days is a large delay and not a small delay and also the only reasoning given by the appellant as can be seen from the above is in view of hardship faced by the appellant because of covid complications, the appellant could not approach this Court would not be a sustainable

ground in view of the law laid down by the Hon'ble Supreme Court in the aforesaid judgment.

5. Accordingly, we are of the view, condonation of delay sought for 434 days cannot be allowed. The application I.A No.1/2024 is dismissed and consequently, the appeal and also the application for stay are dismissed.

6. It is noted that the appellant had deposited an amount of Rs.3,60,054/- in this Court. The counsel for the appellant states the said amount need to be released in favour of the respondent herein.

7. In view of the above submission of the counsel for appellant, the amount of Rs.3,60,054/- with accrued interest, if any, shall be released in favour of the respondent herein in the presence of the counsel upon proper identification.

The appeal is dismissed.

Sd/-
(V KAMESWAR RAO)
JUDGE

Sd/-
(S RACHAIAH)
JUDGE

UN, List No.: 1 Sl No.: 10