



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

CIVIL REVISION PETITION NO. 83 OF 2018

R

BETWEEN:

MANGALORE CITY CORPORATION
LALBAGH ROAD,
MANGALORE - 575 003
BY ITS COMMISSIONER.

...PETITIONER

(BY SRI. SATHYA, ADVOCATE FOR
SRI. K.V. NARASIMHAN, ADVOCATE)

AND:

1. M/S GAMMON INDIA LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISSIONS OF THE COMPANIES ACT, 1956
HAVING ITS OFFICE AT "GAMMON"HOUSE,
VEER SAVARKAR MARG,
P.O. BOX, NO.9129, PRABHADEVI,
MUMBAI - 400 025.
BY ITS AUTHORISED SIGNATORY MR. J.L. ASHER,
VICE PRESIDENT AND HEAD WORK SURVEY.
2. KARNATAKA URBAN INFRASTRUCTURE
DEVELOPMENT AND FINANCE CORPORATION
LIMITED (KUIDFC), A COMPANY INCORPORATED
UNDER THE PROVISIONS OF
THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT





2ND FLOOR, SILVER JUBILEE
E-BLOCK, UNITY BUILDING,
BANGALORE - 560 001.
KARNATAKA - 460 027
AND HAVING ONE OF ITS OFFICES
AT KUIDC, OFFICE NO. 15-12-621,
1ST FLOOR, KADRI MARKET,
CITY CORPORATION COMPLEX
MALLILATTA, MANGALORE - 575 002.

...RESPONDENTS

(BY SRI. MANOJ K, ADVOCATE FOR
SRI. MAHABALESHWAR G.C, ADVOCATE FOR R1;
R3 IS SERVED AND UNREPRESENTED;
VIDE ORDER DATED 22.04.2021, NOTICE TO R2 IS
DISPENSED WITH)

THIS CRP IS FILED UNDER SEC.115 OF THE CPC.,
AGAINST THE ORDER DATED 16.01.2018 PASSED ON IA NO.11
IN OS NO.73/2013 ON THE FILE OF THE III ADDL.SENIOR
CIVIL JUDGE MANGALORE REJECTING THE APPLICATION
FILED UNDER ORDER.11 RULE 21 READ WITH SEC.151 OF
CPC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri.Sathya, learned counsel appearing on
behalf of Sri.K.V.Narasimhan, learned counsel for the
revision petitioner and Sri.Manoj K., learned counsel
appearing on behalf of Sri.Mahabaleshwar G. C., learned
counsel for respondent No.1.



2. The present revision petition is filed by defendant No.1 in O.S.No.73/2013 challenging the order passed by the learned Trial Judge in dismissing the application filed by the revision petitioner under Order XI Rule 21 of CPC.

3. Facts which are utmost necessary for disposal of the present petition are as under:

3.1. A suit came to be filed by respondent No.1 in O.S.No.73/2013 with the following prayer:

The plaintiff therefore prays that this Hon'ble Court may be pleased to:

a. Pass a judgment and decree against the defendant Nos.1 and 2 directing the defendant Nos.1 and 2 jointly and severally to pay to the plaintiff a principal sum of Rs.6,74,76,632/- (Rupees Six Crores Seventy Four Lakhs Seventy Six Lakhs Six Hundred and Thirty Two Only) together with interest thereon at 15% per annum from the date of filing the suit till the date of payment and/or actual realization



thereof (as per particulars of claim being Exhibit 'A' to the plaint);

- b. Award the plaintiff with costs of the suit; and*
- c. Grant such other and further relief/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

3.2. In the plaint, it is contended that plaintiff is an incorporated company under the provisions of Companies Act having registered office at the address mentioned in the cause title and plaintiff company is engaged in construction business with sufficient experience and expertise to execute mega projects in infrastructure with an excellent track record. Their business activities included transporting engineering, power transmission and distribution, energy, environment and pipelines, hydroelectric power structures, hydraulic and irrigation and industrial structures and buildings.

3.3. It is further contended that defendant No.1 is a corporation formed under the provisions of Karnataka



Municipal Corporation Act, 1976 and defendant No.2 is a company incorporated and registered under the provisions of Companies Act which is a State Government undertaking having its office at Bengaluru and Mangaluru.

3.4. It is further contended that in the year 2003, defendants floated tenders inviting the bids for execution and completion of the work entitled 'Distribution System for Mangaluru South'. The said work was required to be executed in three different zones of Mangaluru city viz., Western zone, Central zone and Eastern Zone.

3.5. Plaintiff submitted the bids in respect of those three zones vide separate letters and defendants accepted the bids of the plaintiff. In furtherance to the letters of acceptance, three separate agreements all dated 04.09.2003 were executed between the defendants as employer on one part and plaintiff as contractor on the other part. Said agreement contained clauses as to completion of work and terms and conditions therein.



Each of the agreement comprised of letter of acceptance, bid, general conditions of contract, contract data, special specifications, drawings, priced bill of quantities, standard specifications and schedules of supplementary information and together called as 'terms of contract'.

3.6. Contract documents were executed which are referred as under (hereinafter referred to as contractual packages):

Sl. No.	Zone	Contract Package number	Contractual value
1.	Western zone	1012-B	9,58,29,964/-
2.	Central zone	1012-C	7,70,32,772/-
3.	Eastern zone	1012-D	7,85,40,917/-

Thus, the total contractual value was to the tune of Rs.25,14,03,653/-.

3.7. The work was required to be carried out as per the said contract including the terms and conditions contained in the contractual documents which were



identical in nature. There was also some risk which was to be called as employer risk and some indemnities which were part of the agreement. Clauses of agreement contained extension of the completion date, compensation disputes, claims and settlement.

3.8. Plaintiff further contended that there was a trend of price index, prior to the year of contract. However, price index since the award of contract in the year 2003, had a sudden increase of 10.76% during the first year of execution and a cumulative increase was to the tune of 53% till the year 2007 when the D. I. Pipe Specials were procured.

3.9. It is also the contention of plaintiff that no prudent person could foresee such a massive change in the trend of steel pricing and as such, defendants were required to reimburse the additional costs towards the reinforcement steel. But they did not agree to reimburse



the additional costs towards D. I. Pipe Specials and C. I. Valves.

3.10. Plaintiff also contended that the defendants are liable to reimburse to the plaintiff a sum of Rs.81,74,000/- under the head of reimbursement of the escalated price in D. I. Pipe Specials and C. I. Valves.

3.11. It is also contended that when the defendants neglected to respond to the claim of the plaintiff to the total principle of Rs.6,74,76,632/-, the suit came to be filed.

3.12. Cause of action paragraph in the plaint reads as under:

"The cause of action for the suit arose on 4th September 2003 when the contract was entered into between the plaintiff and the defendants on 06th April 2010, 8th April 2010 and on 18th June 2010 when the plaintiff complete the work of contract packages 1012B, 1012C and 1012D respectively, on 31st March 2010 when the plaintiff submitted the final bill to the defendants, on 23rd April 2010 when the final bill



certified was paid, on all the dates when the plaintiff made the representation for payment of the aforesaid claim, on 1st November 2010 when the plaintiff issued the letter in terms of clause 21 of the contract and therefore the suit is in time.”

4. Pursuant to the suit summons, defendants entered appearance and filed written statement denying the plaint averments.

5. There was an application filed under Order XI Rule 12 read with Section 151 of CPC seeking for production of the original documents which are in the possession of the plaintiff with a list containing following particulars:

1.	01.09.2003	Letter sent by defendants to the plaintiff
2.	29.01.2004	Letter sent by defendants to the plaintiff
3.	24.02.2004	Letter sent by defendants to the plaintiff
4.	15.04.2004	Letter sent by defendants to the plaintiff
5.	26.06.2004	Letter sent by defendants to the plaintiff



6.	29.06.2004	Letter sent by defendants to the plaintiff
7.	15.03.2005	Letter sent by defendants to the plaintiff
8.	17.09.2004	Letter sent by defendants to the plaintiff
9.	11.03.2005	Letter sent by defendants to the plaintiff
10.	15.03.2005	Letter sent by defendants to the plaintiff
11.	28.03.2005	Letter sent by defendants to the plaintiff
12.	08.04.2005	Letter sent by defendants to the plaintiff
13.	13.04.2005	Letter sent by defendants to the plaintiff
14.	28.04.2005	Letter sent by defendants to the plaintiff
15.	06.05.2005	Letter sent by defendants to the plaintiff
16.	04.08.2005	Letter sent by defendants to the plaintiff
17.	21.11.2005	Letter sent by defendants to the plaintiff
18.	22.02.2006	Letter sent by defendants to the plaintiff
19.	08.06.2006	Letter sent by defendants to the plaintiff
20.	29.06.2006	Letter sent by defendants to the plaintiff
21.	16.09.2006	Letter sent by defendants to the plaintiff



22.	01.12.2006	Letter sent by defendants to the plaintiff
23.	17.01.2009	Letter sent by defendants to the plaintiff
24.	17.01.2009	Letter sent by defendants to the plaintiff
25.	20.01.2009	Letter sent by defendants to the plaintiff
26.	20.01.2009	Letter sent by defendants to the plaintiff
27.	21.01.2009	Letter sent by defendants to the plaintiff
28.	10.02.2009	Letter sent by defendants to the plaintiff
29.	17.04.2009	Letter sent by defendants to the plaintiff
30.	06.05.2009	Letter sent by defendants to the plaintiff
31.	19.06.2010	Letter sent by defendants to the plaintiff
32.	26.09.2009	Letter sent by defendants to the plaintiff
33.	26.06.2004	Letter sent by defendants to the plaintiff
34.	29.06.2004	Letter sent by defendants to the plaintiff
35.	29.07.2004	Letter sent by defendants to the plaintiff
36.	20.09.2004	Letter sent by defendants to the plaintiff
37.	10.03.2005	Letter sent by defendants to the plaintiff



38.	15.03.2005	Letter sent by defendants to the plaintiff
39.	13.04.2005	Letter sent by defendants to the plaintiff
40.	06.05.2005	Letter sent by defendants to the plaintiff
41.	25.01.2006	Letter sent by defendants to the plaintiff
42.	22.02.2006	Letter sent by defendants to the plaintiff
43.	17.11.2006	Letter sent by defendants to the plaintiff
44.	17.04.2007	Letter sent by defendants to the plaintiff
45.	11.03.2005	Letter sent by defendants to the plaintiff
46.	11.03.2005	Letter sent by defendants to the plaintiff
47.	15.03.2005	Letter sent by defendants to the plaintiff
48.	08.04.2005	Letter sent by defendants to the plaintiff
49.	13.04.2005	Letter sent by defendants to the plaintiff
50.	06.05.2005	Letter sent by defendants to the plaintiff
51.	16.01.2006	Letter sent by defendants to the plaintiff
52.	27.02.2007	Letter sent by defendants to the plaintiff
53.	17.04.2007	Letter sent by defendants to the plaintiff



54.	13.07.2007	Letter sent by defendants to the plaintiff
55.	-	Letter sent by defendants to the plaintiff memorandum for variation order
56.	30.03.2010	Letter sent by defendants to the plaintiff with encloser
57.	06.05.2010	Letter sent by defendants to the plaintiff
58.	25.03.2011	Letter sent by defendants to the plaintiff
59.	-	Final bill pertaining to CP No.1012 'B'
60.	-	Final bill pertaining to CP No.1012 'C'
61.	-	Final bill pertaining to CP No.1012 'D'
62.	28.05.2003	Bidding documents CP No.1012 'B'
63.	27.05.2003	Bidding documents CP No.1012 'C'
64.	28.05.2003	Bidding documents CP No.1012 'D'

6. Said application (I.A.No.VII) was opposed by the plaintiff and an order came to be passed on the said application by the Trial Court on 01.03.2016 whereby the application was dismissed.



7. There was an application under Section 114 read with Section 151 of CPC vide I.A.No.8 to review the order dated 01.03.2016.

8. Learned Trial Judge on contest, allowed the application vide I.A.No.8 by order dated 07.12.2016.

9. For the sake of certainty and clarity, said order on I.A.No.VIII is culled out hereunder:

**"ORDERS ON APPLICATION FILED U/S 114 & 151
OF CPC**

The defendant has filed this application to review the order dated 01.03.2016 passed on I.A.No.7.

It is submitted that the defendant has filed the I.A.No.6 to receive the copies of document and the original which are in possession of the plaintiff. The defendant has also filed I.A. No.7 on the same day required the plaintiff to produce the original mentioned in the list. The court after hearing the I.A.No.7 had dismissed on the ground that unless the copies are produced plaintiff cannot be directed to produce the original. Perhaps this order was passed by oversight as the copies had produced along with I.A.No.6. The order of dismissal appears to made by



oversight and for non production of copies. Hence this application.

The plaintiff has filed objections stating that this court after considering the objection filed by him permitted to produce the documents even though there is delay, hence the defendants have to establish admissibility of the said documents in trial. Mere marking of documents does not mean that the said documents have been accepted as admissible. The defendants have failed to establish that they have despatch the said documents and the plaintiff are in custody of the original. By allowing the copies of documents produced at a later stage it cannot be come to conclusion that the documents have been sent and received by the plaintiff. Therefore the order passed by this court is justified. This application does not survive for consideration as there are no errors much less apparent on the face of the order of this court and prays to reject the application.

Heard both sides.

The plaintiff has filed this suit against the defendant for the relief of recovery of money. When the stage is for cross examination of PW-1 the defendant has filed I.A.No.6 and 7 to receive documents and to discover certain documents on oath. This court after hearing both sides allowed the I.A.No.6 and rejected the



I.A.No.7 on the ground that no copies of the original documents which ought to be discovered was produced before this court. Hence now the defendant has come up with this application on the ground that they have produced the copies of the documents which original ought to be discovered from the plaintiff. It is true that along with the I.A.No.6 the copies of documents were produced and however the I.A.No.6 was allowed by this court. According to section 114 of CPC it clearly says that review of the order can be made by the same court which had passed the order wherein the no appeal preferred. Further according to order 11 rule 12 of CPC the application can be made to discover the documents on oath which are in possession of some other person. The matter of establishing the case and documents the burden is upon the defendant however if the documents were received no hardship would be caused to the plaintiff. If at all the plaintiff is in possession of those documents he is directed to produce the same before this court by taking notice. Otherwise the burden is upon the defendant to prove his defence. Hence I proceed to pass the following:-

ORDER

I.A.No.8 filed u/s 114 & 151 of CPC is hereby allowed without cost.



Further plaintiff is directed to take notice to produce the documents as sought in I.A.No.7 by the defendant by next date, if not submit suitable reply to the notice.”

10. Admittedly, plaintiff did not comply the order passed on I.A.No.8 dated 07.12.2016 nor challenged the said order.

11. Consequently, defendants filed an application vide I.A.No.11 under Order XI Rule 21 read with Section 151 of CPC.

12. Learned Trial Judge after entertaining the objections, rejected the said application vide I.A.No.11 by order dated 16.01.2018.

13. Being aggrieved by the same, it is defendant No.1 who have filed the present revision petition assailing the validity of the order dated 16.01.2018 in the present revision petition on the following grounds:



- *The impugned order at Annexure-A is opposed to the probabilities of the case, material on record and, as such, unsustainable in law.*
- *The Trial Court has failed to appreciate the scope of order 11 Rule 21 CPC. This has led to miscarriage of justice.*
- *The order impugned is passed without application of mind. The order passed on I.A.No.8 have not been complied by the 1st respondent. The Trial Court had directed the respondent No.1 to take notice to produce the documents as sought in I.A.No.7. However, inspite of giving many opportunities, the respondent No.1 did not comply the directions of the Hon'ble Court. As such, the suit had to be dismissed for non-prosecution. But the same is not done.*

14. Learned counsel for the revision petitioner reiterating the grounds urged in the revision petition vehemently contended that when there is no compliance to the order dated 07.12.2016 in furnishing the documents as is allowed by the Court nor filed any suitable reply, by exercising the power vested under Order XI Rule 21 of CPC, suit should have been dismissed by the Trial Court.



15. As such, the order passed by the learned Trial Judge on 16.01.2018 in rejecting I.A.No.11 without assigning any reasons is incorrect and resulted in injustice.

16. He also contended that learned Trial Judge while dismissing I.A.No.11, ignored the fact that I.A.No.7 came to be allowed by virtue of the order dated 07.12.2016 and therefore, rejection of I.A.No.11 is *per se* incorrect which needs to be set aside and suit is to be dismissed.

17. Per contra, Sri.Manoj K., learned counsel for respondent No.1/plaintiff supports the impugned order by contending that no particulars are forthcoming as to the documents which are sought to be produced by the defendants from the custody of the plaintiff in I.A.No.7. Therefore, plaintiff was not obliged to comply the order dated 07.12.2016 vide I.A.No.8.

18. He would further contend that there was no notice issued by the defendant in pursuance of the order



dated 07.12.2016 whereby the plaintiff was supposed to comply the order dated 07.12.2016 in allowing I.A.No.7 and sought for dismissal of the revision petition.

19. He invited the attention of this Court to the operative portion of the order dated 07.12.2016 which reads as under:

"I.A.No.8 filed under Section 114 and 151 of CPC is hereby allowed without cost.

Further, plaintiff is directed to take notice to produce the documents as sought in I.A.No.7 by the defendant by next date, if not submit suitable reply to the notice."

20. In the light of the rival contentions of the parties, this Court perused the material on record meticulously.

21. On such perusal of the material on record, plaintiff has filed the present suit for recovery of sum of Rs.6,74,76,632/-. Particulars were sought for vide I.A.No.7 along with the list referred to supra.



22. In the list, necessary particulars are made available. At the first instance, I.A.No.7 came to be dismissed by order dated 01.03.2016.

23. However, defendants filed I.A.No.8 under Section 114 read with Section 151 of CPC. Said application, on contest, order on I.A.No.8 came to be passed as referred to supra.

24. Thus, by order dated 07.12.2016, I.A.No.8 came to be allowed consequently, I.A.No.7 also came to be allowed which was dismissed at the first instance.

25. In other words, the plaintiff was called upon to comply the order on I.A.No.8 allowing I.A.No.7 in furnishing the documents as per the list annexed to I.A.No.VII as referred to supra. There is no proper explanation nor reply to the order dated 07.12.2016 by the plaintiff.

26. As such, I.A.No.11 came to be filed under Order 11 Rule 21 of CPC. Under I.A.No.11, defendants wanted



the suit to be dismissed as plaintiff failed to comply the order dated 07.12.2016.

27. Learned Trial Judge while dismissing I.A.No.11 vide order dated 16.01.2018, in paragraph Nos.8 and 9 has held as under:

"8. It is pertinent note her that this court has allowed I.A.No.6 and reject the I.A.No.7 on the ground that the copy of the listed document is definitely available with the defendant and they can produce those documents and can sought for production or discovery or original from the plaintiff.

9. Further the defendant No.1 has filed I.A.No.8 for review the order dated 1.3.2016 passed in I.A.No.7. It is pertinent note here that this court in the said order clearly held that the matter of establishing the case and documents the burden is upon the defendant however if the documents were received no hardship would be caused to plaintiff. Further it is held that if the plaintiff is in possession of those documents he is directed to produce the same before the court by taking notice. Therefore now it is the duty of the defendant to serve the notice to the plaintiff along with the copy of the documents which are all required to produce by the plaintiff. Considering all these aspects, this court hold



that the application filed by the defendant No.1 is not maintainable. Hence, by answering the above point in the negative, this court proceed to pass the following:

ORDER

The application filed by the defendant No.1 under Order 11 Rule 21 read with Section 151 of CPC is hereby rejected.

No order as to costs."

28. In order to appreciate the correctness or validity of the said reasoning of the Trial Court, it is just and necessary for this Court to cull out Order XI Rule 21 of CPC which reads as under:

"21. Non-compliance with order for discovery-(1)

Where any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and, if a defendant, to have his defence, if any struck out, and to be placed in the same position as if he had not defended, and the party interrogating or seeking discovery or inspection may apply to the Court for an order to that effect and an order may be made on such application accordingly, after notice to the parties and



after giving them a reasonable opportunity of being heard.

(2) *Where an order is made under sub-rule (1) dismissing any suit, the plaintiff shall be precluded from bringing a fresh suit on the same cause of action."*

29. On careful perusal of the above provision, it is crystal clear that when the party fails to adhere to the order passed under Order XI Rule 12, Court has got wide discretion to dismiss the suit for default if the plaintiff was required to comply the order or reject the written statement if the defendant was required to comply the order passed on an application filed under Order XI Rule 12 of CPC.

30. In the case on hand, it is the plaintiff who was required to comply the order dated 07.03.2016 in allowing I.A.No.7 by allowing I.A.No.8.

31. Plaintiff's explanation is that the particulars called for in I.A.No.7 is vague in nature and therefore, plaintiff could not comply the order.



32. Second ground on which the order was not complied is that there was no notice issued by the defendants and therefore, there could not be any compliance.

33. In this regard, operative portion of the order dated 07.12.2016 assumes importance which has been referred to supra.

34. While allowing I.A.No.8, the Court has directed the plaintiff to take notice to produce the documents as is sought in I.A.No.7 along with the list or in the alternative to submit suitable reply.

35. In this regard, understanding of the plaintiff that separate notice was necessary to be issued by the defendants pursuant to the Court order is totally uncalled for and order dated 07.12.2016 itself is clear that defendants were directed to take notice to produce the documents as is called for in I.A.No.7 along with the list.



36. Under such circumstances, no fresh notice from the defendant was necessary as it is the Court which has put the plaintiff on notice to produce the documents or to submit suitable reply.

37. Admittedly, plaintiff did not choose to comply the order dated 07.12.2016 nor submitted any suitable reply. Atleast when I.A.No.11 came to be filed, plaintiff could have afforded proper reply. Plaintiff could have sought for direction to the defendants to furnish necessary particulars for complying the order dated 07.12.2016.

38. Unfortunately, the learned Trial Judge failed to understand the scope of Order XI Rule 21 of CPC and in paragraph Nos.8 and 9 as referred to supra, deviated itself from its earlier reasoning in the order dated 07.12.2016 and wrongly dismissed the application filed under Order XI Rule 21 of CPC by the defendants which is failure to exercise the discretion vested in it.



39. As such, the impugned order calls for interference in the revisional jurisdiction.

40. Accordingly, from the above discussion, this Court is of the considered opinion that the application filed under Order XI Rule 21 of CPC needs to be allowed by setting aside the impugned order.

41. Hence, the following:

ORDER

- i. Revision petition is ***allowed***.
- ii. Consequently, I.A.No.11 filed under Order 11 Rule 21 of CPC is hereby allowed.
- iii. Further, consequences thereto, suit stands dismissed for default.

Sd/-
(V SRISHANANDA)
JUDGE

KAV
List No.: 1 Sl No.: 36
CT: BHK