

(2025-2)217 PLR 771 (Kar.)(SN) = 2025 PLRonline 481867

KARNATAKA HIGH COURT, DHARWAD BENCH

Before: Justice G Basavaraja

DESAI UDAYKUMAR

Versus

M/s. NR GREENWOOD CONSTRUCTION PRIVATE LIMITED

CRP No. 100079/2025

(i) Civil Procedure Code, 1908 - Order VII Rule 11(a), (b) and (d) - Rejection of plaint - Memorandum of Understanding for execution of Joint Development Agreement - Agreement to enter into an agreement - Not enforceable - Lack of privity of contract - No concluded contract between parties - Relief sought is specific performance of MOU to execute JDA - Suit barred by law - Plaint liable to be rejected at threshold under Order VII Rule 11 - Trial Court's order rejecting defendant's application set aside - Application allowed and plaint rejected.

The plaintiff filed suit seeking specific performance of Memorandum of Understanding dated 12.03.2021, directing defendant to execute Joint Development Agreement in respect of suit properties - Defendant filed application under Order VII Rule 11(a), (b) and (d) CPC for rejection of plaint - Trial Court rejected application - Plain reading of MOU makes clear there is no privity of contract between parties and contract is not concluded contract - When there is no concluded contract between parties, parties cannot seek enforcement of such agreement - MOU is only expression of intent to enter into Joint Development Agreement, which does not embody consideration or binding obligation - Suit of plaintiff is barred by law - When suit is barred by law, trial Court not required to adjudicate matter - Court should not be hesitant to reject plaint when plaintiff's claims are hopelessly barred under law - If trial is conducted, it would constitute abuse of legal process - Court has to summarily reject plaint if clearly barred by law under principle of 'nip in the bud' to terminate meritless cases and prevent unnecessary protraction, upholding principles of legal certainty and efficient judicial administration - Revision petition allowed - Trial Court's order set aside - Application under Order VII Rule 11 allowed and plaint rejected.

Relied upon: Speech and Software Technologies (India) Private Limited v. Neos Interactive Limited, (2009) 1 SCC 475; Dahiben v. Arvindbhai Kalyanji Bhanusali and Other, (2020) 7 SCC 366; Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsale and Another, Civil Appeal No.14807 of 2024 decided on 20.12.2024 [Para 17, 19, 21, 23]

"In the case on hand, a plain reading of aforesaid memorandum of understanding, makes it clear that there is no privity of contract between the parties and the contract is not a concluded contract. When there is no concluded contract between the parties, the parties cannot seek enforcement of such agreement as contemplated under Section 14 of Chapter II of Specific Relief Act, 1963." [Para 17]

"When the suit is barred by law, the trial Court is not at all required to adjudicate the matter in dispute. Under the given set of circumstances, the Court should not be hesitant to reject the plaint when the plaintiff's claims are hopelessly barred under law. If trial is conducted, it would constitute an abuse of legal process and in view of the decision of the Hon'ble Supreme Court, the Court has to summarily reject the plaint if it is clearly barred by law under the principle of 'nip in the bud' and to terminate the meritless cases, and prevent their unnecessary protection, upholding the principles of legal certainty and efficient judicial administration." [Para 19]

(ii) Indian Contract Act, 1872 - Section 25 - Agreement without consideration is

void - Memorandum of Understanding for Joint Development Agreement - No recital of consideration in MOU - Plaintiff has not paid any consideration to defendant - Defendant has not received any consideration from plaintiff - Agreement between parties providing defendant 45% of developed land and plaintiff-developer 55% cannot be termed as consideration - MOU being only expression of intent (nudum pactum), incapable of enforcement - Maxim: ex nudo pacto non oritur actio - From bare promise, no action arises - Unless mutual consideration flows, no legal obligation can arise - MOU is “agreement to agree” and unenforceable.

Plain reading of contents of Memorandum of Understanding makes crystal clear that there is no recital as to consideration - Admitted fact that plaintiff has not paid any consideration to defendant - Defendant has also not received any consideration from plaintiff - There is no consideration for Joint Development Agreement also - Recitals of impugned document reveal that defendant, being owner of land, has been given 45% in developed land, whereas plaintiff, who is developer, is given 55% of developed land - This agreement between parties cannot be termed as consideration - Section 2(e) of Indian Contract Act contemplates that every promise and every set of promises, forming consideration for each other, is agreement - Section 2(g) contemplates that agreement not enforceable by law is said to be void - Section 2(h) contemplates that agreement enforceable by law is contract - Section 25 contemplates that agreement made without consideration is void - Maxim: ex nudo pacto non oritur actio - from bare promise, no action arises - Unless mutual consideration flows, no legal obligation can arise - MOU being only expression of intent (nudum pactum), incapable of enforcement - Under Section 25 of Indian Contract Act, 1872, agreement without consideration is void (nudum pactum) - Well settled law that Memorandum of Understanding/Letter of Intents is mere “agreements to agree” and unenforceable.

Relied upon: Speech and Software Technologies (India) Private Limited v. Neos Interactive Limited, (2009) 1 SCC 475 [Para 13, 18, 23]

“A plain reading of the contents of Memorandum of Understanding makes it crystal clear that there is no recital as to the consideration. It is an admitted fact that the plaintiff has not paid any consideration to the defendant. The defendant has also not received any consideration from the plaintiff. There is no consideration for Joint Development Agreement also... This agreement between the parties cannot be termed as consideration... Section 25 of the Act contemplates that an agreement made without consideration is void. As the maxim goes, ex nudo pacto non oritur actio - from a bare promise, no action arises. Unless mutual consideration flows, no legal obligation can arise. The Memorandum of Understanding being only an expression of intent (nudum pactum), incapable of enforcement.” [Para 13]

(iii) Specific Relief Act, 1963 - Section 14 - Contracts not specifically enforceable - Contract which is in its nature determinable - Essential terms left open - Arrangement lacks requisite certainty to be specifically enforced - Maxim: id certum est quod certum reddi potest - That is certain which can be made certain - Contract must be concluded with certainty of terms, otherwise unenforceable - Agreement to enter into agreement is not enforceable nor does it confer any right upon parties.

Section 14 of Specific Relief Act, 1963 provides that contracts which are in their nature determinable cannot be specifically enforced - Maxim id certum est quod certum reddi potest—that is certain which can be made certain—underscores requirement of certainty in contractual terms - Contract must be concluded with certainty of terms; otherwise it is unenforceable - In present case, essential terms have been left open, and therefore arrangement lacks requisite certainty to be specifically enforced - Supreme Court held that agreement to enter into agreement is not enforceable, nor does it confer any right upon parties

- Upon perusal of memorandum of understanding and averment made in plaint, it is clear that it is only expression of intent to enter into Joint Development Agreement, which does not embody consideration or binding obligation.

Relied upon: Speech and Software Technologies (India) Private Limited v. Neos Interactive Limited, (2009) 1 SCC 475. [Para 14, 15, 18]

“The maxim id certum est quod certum reddi potest—that is certain which can be made certain—underscores the requirement of certainty in contractual terms. A contract must be concluded with certainty of terms; otherwise it is unenforceable. In the present case, essential terms have been left open, and therefore the arrangement lacks the requisite certainty to be specifically enforced.” [Para 15]

(iv) Civil Procedure Code, 1908 - Order VII Rule 11(d) - Suit barred by law - Purpose to “nip in the bud” and summarily reject suit clearly barred by law - Courts should not be hesitant to reject plaint when plaintiff’s claims are hopelessly time-barred or constitute abuse of legal process - Forcing defendants to undergo ordeal of trial when suit clearly unsustainable is harmful and unjust - Rejecting stale or frivolous claims at threshold crucial to ensure judicial resources not wasted on litigation lacking merit - Proactive approach to terminate meritless cases and prevent unnecessary protraction upholds principles of legal certainty and efficient judicial administration.

Hon’ble Supreme Court re-affirmed that intent of Order VII Rule 11(d) is to “nip in the bud” and summarily reject suit if clearly barred by law - Supreme Court highlights that courts should not be hesitant to reject plaint when plaintiff’s claims are hopelessly time-barred or constitute abuse of legal process - Forcing defendants to undergo ordeal of trial when suit clearly unsustainable and time-barred is considered harmful and unjust - Rejecting stale or frivolous claims at threshold crucial to ensure judicial resources not wasted on litigation that lacks merit and is statutorily barred - Decision encourages proactive approach to terminate meritless cases and prevent their unnecessary protraction, upholding principles of legal certainty and efficient judicial administration.

Followed: Mukund Bhavan Trust v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsale and Another, Civil Appeal No.14807 of 2024 decided on 20.12.2024. [Para 16]

“The Hon’ble Supreme Court re-affirmed that the intent of Order VII Rule 11(d) is to ‘nip in the bud’ and summarily reject a suit if it is clearly barred by law... The Hon’ble Supreme Court highlights that courts should not be hesitant to reject a plaint when the plaintiff’s claims are hopelessly time-barred or constitute an abuse of the legal process... Forcing defendants to undergo the ordeal of a trial when the suit is clearly unsustainable and time-barred is considered harmful and unjust... Rejecting stale or frivolous claims at the threshold is crucial to ensure judicial resources are not wasted on litigation that lacks merit and is statutorily barred.” [Para 16]

(v) Civil Procedure Code, 1908 - Order VII Rule 11 - Document forming basis of plaint to be treated as part of plaint - When document referred to in plaint forms basis of plaint, it should be treated as part of plaint - Having regard to documents filed along with plaint are required to be taken into consideration for deciding application under Order VII Rule 11(a).

Supreme Court held that having regard to documents filed along with plaint are required to be taken into consideration for deciding application under Order VII Rule 11(a) of Code of Civil Procedure - When document referred to in plaint forms basis of plaint, it should be treated as part of plaint.

Relied upon: Dahiben v. Arvindbhai Kalyanji Bhanusali and Other, (2020) 7 SCC 366. [Para

20]

“In another decision in the case of DAHIBEN (supra), the Hon’ble Supreme Court has held that having regard to the documents filed along with the plaint are required to be taken into consideration for deciding the application under order VII Rule 11(a) of Code of Civil Procedure. When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.” [Para 20]

Facts - The plaintiff-respondent filed suit against defendant-petitioner seeking decree directing defendant to execute Joint Development Agreement in respect of suit properties as per Memorandum of Understanding dated 12.03.2021 - Defendant is owner of property bearing Sy.No.48 measuring 22 acres 13 guntas; 2 acres 20 guntas in Sy.No.48/1 and 8 acres 24 guntas in Sy.No.49/3, all situate at Mansur village, Dharwad - Plaintiff offered to enter into Joint Development Agreement with defendant to develop property into residential layout - Parties entered into MOU dated 12.03.2021 agreeing to execute JDA with ratio of 45:55%, of which 45% of developed area would be allotted to defendant and 55% to plaintiff - Under MOU, defendant would execute JDA within three months from date of entering into MOU - Defendant failed and neglected to execute JDA within stipulated period - Plaintiff issued legal notice dated 08.02.2022 - Defendant issued vague and evasive reply dated 25.02.2022 - Defendant entered appearance and filed written statement - Defendant filed application under Order VII Rule 11(a), (b) and (d) CPC for rejection of plaint - Trial Court rejected application vide order dated 18.03.2024 - Defendant challenged same in CRP No.100044/2024 - This Court allowed revision petition in part vide order dated 12.12.2024 and remanded matter to trial Court for fresh consideration - After remand, trial Court heard arguments and again rejected application vide order dated 19.04.2025 - Being aggrieved, defendant filed present revision petition.

Judgment

G BASAVARAJA, J. - (25th September, 2025) -

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