

**IN THE COURT OF LXXXII ADDL. CITY CIVIL & SESSIONS  
JUDGE, AT BENGALURU (CCH. 83)**

**THIS THE 04<sup>TH</sup> DAY OF JANUARY 2022**

**PRESENT:**

**SRI. DEVARAJA BHAT. M., B. COM, LL. B.,  
LXXXII ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU.**

**I.A. NO. XX**

**BETWEEN:**

**M/s Electronics and  
Controls Powers Systems  
Private Limited.**

**: APPLICANT/DEFENDANT No.1**

**AND**

**M/s. Wep  
Peripherals Limited.**

**: OPPONENT/PLAINTIFF**

**I.A. NO. XXI**

**BETWEEN:**

**Sri.M.S. Sivasankaran.**

**: APPLICANT/DEFENDANT No.5**

**AND**

**M/s. Wep  
Peripherals Limited.**

**: OPPONENT/PLAINTIFF**

**IN**

**Com.O.S.No.8994/2011**

**BETWEEN:**

**M/s. Wep  
Peripherals Limited.**

**: PLAINTIFF**

**AND**

**M/s Electronics and  
Controls Powers Systems  
Private Limited and  
Others.**

**: DEFENDANTS**

**ORDERS ON I.A. NO. XX AND XXI**

These two applications are filed by the Applicants/Defendant No.1 and 5 under Order XIII-A of the Civil Procedure Code to pass a summary Judgment dismissing the suit based on the documents produced by them.

**2.** In the accompanying Affidavits, the Deponents have contended as follows:-

That I.A. No. XIX was filed under Order VI Rule 17 of Civil Procedure Code seeking amendment to the written statement to the effect of bringing subsequent events on record which occurred during pendency of suit, that the said I.A, was allowed as per Orders dated 10.02.2020, that after transfer to this court no issues have been framed, that after filing of the suit, the Board of Directors of the Company approved a demerger scheme of the Plaintiff Company and transferred its printing business to M/s Wep Solutions Limited, that the 1<sup>st</sup> Defendant Company filed its objections in Company Petition No. 98/2012 and 99/2012 and objected to the scheme before Hon'ble High Court of Karnataka and the said petitions were disposed off by observing that the interest of objector company against the transferor company in respect of the claim stands safeguarded as per the Orders dated 20.11.2012, that the Defendant No.1 Company assailed the said Order in O.S.A No. 7/2013, which was dismissed on 20.01.2013, that the same was challenged before Hon'ble Supreme Court in SLP No. 35022/2013, that in the said proceedings, the Hon'ble Supreme Court has passed the Order stating that Clauses 8 and 9 of the Scheme of Demerger take care of the interest of the Petitioner, as per its Order dated 21.11.2013, that the right of the Plaintiff Company to continue the suit having extinguished and hence Plaintiff has no real prospect of succeeding on the frivolous

and baseless claim and hence he prays to pass summary judgment by dismissing the suit.

**3.** The Opponent/Plaintiff has filed his detailed separate objections on 26.09.2021 by denying various contentions of the Defendants No. 1 and 5 and prayed to dismiss the said Applications.

**4.** I have heard the arguments of the learned Advocate for both parties.

**5.** Based on the contentions of the respective parties, submissions made by the learned Advocates for both parties, I formulate the following Points for my consideration:-

(1) Whether there are grounds to pass Summary Judgment by dismissing the suit as prayed in the said applications ?

(2) What Order?

**6.** My findings are as follows:-

Point No. 1 : - In the Negative.

Point No. 2 : - As per my final orders for the following reasons.

**REASONS**

**7. Point No. 1 :** - I have perused the entire records. The 1<sup>st</sup> Defendant has not filed its written statement in this suit. After six years of filing of this suit he filed I.A. No. XVII and XVIII to receive his written statement. The said I.As were rejected. The 1<sup>st</sup> Defendant has challenged the said order in Writ Petition No. 6511/2021 and the said Writ Petition is also dismissed. Since, the written statement of the 1<sup>st</sup> Defendant is not taken on file, his right to contest the suit has been forfeited. Therefore, his application is deserves to be dismissed on the sole ground in limini. Though the Advocate for the Defendant No.1 has submitted a list of citations and relied on the ratio of the said decisions in his arguments, I need not prolong about the same in view of the above aspect and for the reasons discussed herein below.

**8.** It is to be noted that earlier the 5<sup>th</sup> Defendant has filed I.A. No.XIX for amendment of his written statement, and the same was partly allowed. In the said amendment application, the 5<sup>th</sup> Defendant has taken very same contentions and he wanted to incorporate all the said aspects in the written statement. However, this court has allowed the said application partly only to include Para No. 33-A and rejected the other portions of the intended amendment. It is to be noted that, the following observations of this court in Orders

on I.A. No.XIX dated 25.02.2020, is relevant for the purpose of this application also:-

***“8. The Scheme of De-merger of the Plaintiff which has been approved by the Hon’ble High Court of Karnataka, as stated in the proposed amendment of I.A. No. XIX is undisputed fact. It is the contention of the Plaintiff in the objection statement that the Scheme of De-merger was relating to its business of manufacture of printers and therefore its business of uninterrupted power supply system has been retained by it and therefore, Scheme of De-Merger does not affect its right to proceed with this suit which was already filed, to recover its dues.***

***9. Since Scheme of De-merger of the business of Plaintiff, is undisputed fact, what is affect of such scheme of de-merger in the right of Plaintiff to proceed with this suit to recover amount from the Defendants, will have to be considered by the Court after trial of the suit.”***

**9.** The said findings/observations are binding on Defendant No.5. He cannot contend otherwise. Thereafter, an Additional Issue No.1 was framed to that effect on 03.03.2020. It is to be noted that a summary judgment cannot be passed after issues were framed.

**10.** After I assuming the charge of this court, though the matter was posted for further cross-examination of PW.1, by invoking the powers of this Court, under Order XV-A Rule 5 of the Civil Procedure Code, as amended under Section 16 of the Commercial Courts Act, in order to facilitate speedy

disposal of the suit under provisions of the Commercial Courts Act, I held a Case Management Hearing During Trial. Thereafter, the parties have filed Statement of Admissions and Denials. A separate detailed Order is passed on Statement of Admissions and Denials on 01.09.2021. While passing such Order, I have requested both parties to find out the points of disputes between the parties in view of the marking of the admitted documents and whether entire dispute can be resolved without recording of further oral evidence by passing a Summary Judgment as required under Order XIII-A of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act. In fact, a mistake crept by me while passing the said Order. In fact, I should have mentioned the provision of law as under Order XV-A Rule 6 (r) of the Civil Procedure Code as amended under Section 16 of the Commercial Courts Act, instead of Order XIII-A of the Civil Procedure Code. The Court has every power to rectify its own mistakes. In view of the said mistake, it gives scopes to the Applicants/Defendants No. 1 and 5 to file the present applications. The said applications are without any merits in view of the earlier Orders as mentioned above. Therefore, I answer this Point in the **'Negative.'**

**11. Point No. 2: -** Therefore, I proceed to pass the following Order.

**ORDER**

***The I.A. No. XX and XXI filed under Order XIII-A of Civil Procedure Code are dismissed.***

***The Defendants No. 1 and 5 are ordered to pay Rs. 1,000/- each to the Plaintiff.***

***For fixing time lines under Case Management Hearing for recording further evidence by 13.01.2022.***

(Dictated to the Stenographer, typed by her directly on the computer, verified by me and pronounced in the open court on 04<sup>th</sup> day of **January 2022**).

**(M. DEVARAJA BHAT)**  
**LXXXII Addl. City Civil & Sessions Judge,**  
**Bengaluru.**

The Order on I.A.No.XX and XXI is pronounced in Open Court. The operative portion of the said Orders is as follows :-

**ORDER**

***The I.A. No. XX and XXI filed under Order XIII-A of Civil Procedure Code are dismissed.***

***The Defendants No. 1 and 5 are ordered to pay Rs. 1,000/- each to the Plaintiff.***

***For fixing time lines under Case Management Hearing for recording further evidence by 13.01.2022.***

(vide my separate detailed Order dated 04.01.2022).

(Typed to my dictation).

**LXXXII ACCJ, B'LURU.**