

**IN THE COURT OF THE LXXXIII ADDITIONAL CITY CIVIL
AND SESSIONS JUDGE AT BENGALURU CITY [CCH-84]**

:Present:

Ravindra Hegde, M.A., LL.M.,
**LXXXIII Addl. City Civil & Sessions Judge,
Bengaluru**

Dated this the 30th day of January 2021

COM.O.S.No.8103/2006

Plaintiff

M/s.RPS Orchid Private Limited,
A Company incorporated under
Companies Act,
No.3, Raj Bhavan Road,
Bengaluru-560001.
Represented by its Managing
Directors Sri.Ramesh S. jannu,
aged about 44 years,
S/o late Srinivas V. Jannu.

[By Sri. D.R.R, Advocate]

/v e r s u s/

Defendants:

1. Sri.M.S.Papanna,
aged about 66 years,
S/o late M.Sreenivasalu.
2. Sri.M.S.Mallappa,
aged about 65 years,
S/o late M.Sreenivasalu.

Both are residing at No.66/1,
7th Cross, 8th Main, RMV Extension,
Bengaluru-560008.

3. Prasanna Kumar
S/o Sri.Muddappa,

R/at No.441, Arya Gruha,
8th Main, RMV Extension,
Bengaluru-560008.

4. M.Govindaraju,
aged about 51 years,
S/o Muniayappa,
R/at No.27/C,
Kempapura, Anjanappa Layout,
Hebbal, Bengaluru-560024.
5. Jayabarathi,
W/o S.S.Sureshbabu,
D/o late Munivenkatappa,
aged about 35 years,
R/at No.20, 1st Main, 3rd Cross,
Munkrishnappa Layout,
Kanakanagara,
Near Pattegarapalya,
Bengaluru-560079.
6. S.Navaneetha,
W/o late S.Subbanna,
aged about 65 years,
R/at No.27, 'Sreenivasa', 4th Main,
8th Cross, Sanjeevajinagar,
Bengaluru-560072.

(By Sri.P.A.N, Advocate)

ORDERS ON I.A.NO.IV, V, VII & VIII

I.A.No.IV & V are filed by counsel for LR's of defendant No.1, praying to re-open the case by re-calling the Order dated 15/12/2020 and to permit defendant No.1 to cross examine PW.1.

2. I.A.No.VII & VIII are filed by counsel for defendant No.2, praying to re-open the case by re-calling Order dated 15/12/2020 and to permit cross examination of PW.1 by the 2nd defendant.

3. In the affidavit in support of I.A.No.IV & V, the Legal Representative of defendant No.1 has stated that during cross examination of PW.1, this court had proposed the matter for settlement and the parties were called on 11/12/2020 and proposal for settlement was given and on 15/12/2020 case was posted for accepting the settlement terms and on that day defendants No.1 and 2 were ready for settlement, but plaintiff was not ready and thereafter on the same day court insisted defendant No.1 to cross examine PW.1 and PW.1 was partly cross examined and subsequently the counsel has payed time and the court has rejected the prayer and closed the cross examination and posted the matter for defendants' evidence on 16/12/2020. It is stated that this order is necessary to be recalled. It is stated that due to unavoidable and compelling circumstances, PW.1 could not be cross examined completely and it is necessary to re-call the said order and permit the LRs of defendant No.1 to cross examine PW.1.

4. In the affidavit in support of I.A.No.VII & VIII, the Power of Attorney Holder of 2nd defendant has stated similarly and has stated that the case was posted for reporting

settlement on 15/12/2020. The defendants have agreed for settlement, but plaintiff did not agree and counsel for defendant No.1 conducted cross examination for about 45 minutes and as he felt uneasiness and sought deferring of the matter and court has rejected the prayer and has not given complete opportunity to cross examine the witness and the court has taken even the cross examination by defendant No.2 as Nil, though counsel appearing for defendant No.2 had sought time. It is stated that re-calling of the said order is very necessary and defendant No.2 should be given opportunity to cross examine PW.1.

5. The counsel for plaintiff has filed objection to these applications and stated that from the inception the defendant adopted a course of delaying and protracting proceedings which is evident from the ordersheet. It is stated that even after the case was transferred to this court, defendants failed to cross examine PW.1 and in the guise of settlement proposal, the defendants have been adopting delay tactics. It is stated that the counsel for defendant No.1 availed opportunity of cross examination in part, but thereafter again sought adjournment and defendant No.2's counsel has sought adjournment without justification and did not avail the opportunity of cross examination. It is stated that the case is being old one, this court has properly dismissed the application and there are no grounds made out for re-call or

restoration of stage. On these grounds applications are prayed to be dismissed.

6. Heard both the counsels. Perused records.

7. The points that arise for consideration are:

1. Whether the case is to be re-opened by re-calling the order dated 15/12/2020 and defendants are to be permitted to cross examine PW.1 as prayed in I.A.No. IV, V, VII & VIII?

2. What order?

8. My finding to the above points are as follows:

POINT No.1 : In the Negative.

POINT No.2 : As per final order for the following:

REASONS

9. **POINT No.1** : This case for specific performance of the development agreement dated 18/04/2005 was filed on 11/09/2006. When the case was posted for cross examination of PW.1 and for settlement, the matter could not be settled and on the same day, case was taken up for cross examination of PW.1 and counsel for LRs of defendant No.1 partly cross examined and prayed time for further cross examination and the prayer was rejected and the cross of PW.1 by LRs of defendant No.1 was taken as nil. Since counsel for defendant No.2 also prayed time and by rejecting prayer of the defendant No.2, cross of PW.1 by defendant No.2 is also taken as nil and then the case was posted for

defendants side evidence to 16/12/2020 and on 16/12/2020, defendants evidence taken as nil and the case is posted for arguments to 18/12/2020. On 18/12/2020, these applications were filed seeking re-call of order dated 15/12/2020 and also seeking permission to cross examine PW.1. The application has been opposed by the learned counsel for plaintiff and the arguments of both the counsels are heard.

10. On looking to the entire file, as stated above this suit was filed on 11/9/2006. The ordersheet discloses that the temporary injunction was granted on 13/9/2006 and summons was sent to the defendants and defendants No.1 and 2 appeared through counsel on 12/4/2007. The ordersheet discloses that the defendant No.1 had filed application for vacating of temporary injunction and when the case was posted for objections and parties have settled the matter and case was posted for settlement. On 17/12/2007, plaintiff and defendant No.1 were present and compromise petition was filed and cheque for Rs.50,00,000/- was given to the plaintiff as part payment and since defendant No.2 was not present on that day, case was adjourned to 18/12/2007 and on 18/12/2007, defendant No.2 appeared and all the parties were present and the compromise petition was allowed and suit was decreed in terms of compromise and even decree was drawn in terms of compromise petition. As per the compromise decree, the defendants were required to pay

Rs.13,25,00,000/- to the plaintiff and had paid Rs.50,00,000/- as part payment by cheque and balance of Rs.12,75,00,000/- was agreed to be paid within 60 days and on failure to pay within 60 days, compromise stands terminated and suit have to proceed. The ordersheet discloses that as terms of compromise are not fulfilled and balance payment is not made, plaintiff filed application on 20/2/2008 for re-opening of the case and the defendants appeared and took 2-3 adjournments for making payment, but payment was not made and then, the court has re-opened the case as mentioned in the compromise petition and then issues were framed on 25/6/2008.

11. On 18/8/2009 PW.1 was examined in chief and documents were marked. It would be relevant to note that on 16/9/2009, 10/11/2009, 7/12/2009, 13/1/2010, 15/2/2010, 12/3/2010 and 5/4/2010. PW.1 was present, but defendants took time by filing adjournment application U/O.17 Rule 1 of CPC and on few occasions time was granted by imposing cost. When case was posted for cross examination as last chance on 5/6/2010, counsel for defendants filed I.A.No.V for appointment of Court Commissioner for recording cross examination of PW.1. This application was allowed on 5/7/2010 and Commission Warrant was issued. The Commission Warrant was awaiting for long time and on 30/10/2010, Commissioner was discharged and the case was again posted for cross

examination of PW.1 before the court to 27/11/2010 and from that day to 11/1/2011. On that day some application was filed and case was deferred for hearing on the applications. In the meantime, application for impleading some defendants was filed and was allowed and those defendants have not appeared and once again case is posted for cross examination on 26/6/2018. Again the case was adjourned many times and on 30/5/2019 again the case was called for cross examination, but PW.1 was absent and on 12/6/2019 PW.1 was present and sought time and on 21/6/2019, PW.1 was present and plaintiff filed application for appointment of Court Commissioner for recording cross examination of PW.1 and that was allowed and Court Commissioner has reported later that parties have expressed their intention to settle the matter and therefore the Court Commissioner could not record the cross examination. Thereafter Commission Warrant was re-called and the matter was again taken up for cross examination before the court. On 26/2/2020, PW.1 was present and counsel for defendants prayed time and on the next two dates PW.1 was remained absent. Thereafter, for the absence of PW.1, some dates were given and on 10/12/2020 case was posted for cross examination, on which date at the time of cross examining, court found some element of settlement and then the parties were asked to come on 11/12/2020 to try for settlement and settlement talks were held and case was adjourned to

15/12/2020, on which date the impugned orders were passed.

12. On looking to the entire ordersheet in this case, earlier there was a compromise reported and even compromise decree was passed in December 2007 and defendant had agreed to pay Rs.13,25,00,000/- to the plaintiff and have paid Rs.50,00,000/- as mentioned in the compromise petition and they had sought time of 60 days for making balance payment. This 60 days expired to 18/2/2008 and thereafter as, it terms of compromise, payment was not made, case was taken up. The case which was already settled and went upto decreeing of the suit in terms of compromise was again taken up before the court for the fault of the defendants in complying with the terms of compromise. After taking up the case again, 2-3 adjournments were taken by the defendants for making payment and thereafter issues were framed and chief examination of PW.1 was recored on 18/8/2009. Thereafter on cost or otherwise time was granted to defendants for cross examination of PW.1 for all these time. Even Court Commissioner was appointed two times for recording cross examination of PW.1. On considering all these more than sufficient opportunity has been given from the beginning to the defendants to proceed with the case. The case which was once decreed and on default of the defendants was again taken up, is pending before the court from 2006 to

even 2021. This is one of the oldest matter pending before this court.

13. As could be seen from the records, defendants have not cross examined PW.1, inspite of giving all the opportunities. Though on 15/12/2020 the case was posted for reporting settlement, the ordersheet of the previous dates clearly show that the defendants have taken more than sufficient time in the matter. Defendants who had entered into compromise with the plaintiff, for certain amount in 2007 and have failed to comply with the compromise terms, are now seeking equity after taking this much time from 2009 till 2020 for cross examining PW.1. A person who seeking equity must do equity. The proceeding of this case do not show any such equity done on the part of the defendants. As such, on the grounds of equity or justice the application filed by defendants cannot be considered, since PW.1 was examined in chief on 18/8/2009 and not cross examined and even earlier defendants who had entered into compromise before the court have not honoured the same, for all these time, it is not proper to allow these applications. Though the defendants are seeking simple re-call of the order dated 15/12/2020, this order is having a long history as mentioned above and case is pending for cross examination of PW.1 from 18/8/2009. As such the order dated 15/12/2020 cannot be read in isolation.

14. On considering the entire matter re-calling of the order dated 15/12/2020 is not in the interest of justice. On 16/12/2020, defendants evidence is also taken as nil and case is rightly posted for arguments. Accordingly, these applications are devoid of merits and are necessary to be dismissed and the case is to be taken up for arguments and for disposal of the earliest. Accordingly, point No.1 is answered in the negative.

15. POINT No.2 : For my discussion on point No.1, following order is passed:

ORDER

I.A.Nos.IV & V filed by counsel for LR
of defendant No.1 and I.A.No.VII & VIII filed
by counsel for defendant No.2 are
dismissed.

[Dictated to the Judgment Writer; transcript thereof corrected, initialed and then pronounced by me, in the Open Court on this the **30th day of January 2021**]

[Ravindra Hegde]
LXXXIII Additional City Civil Judge.
BENGALURU.