

Order on I.A.No. 1

The counsel for petitioner has filed I.A No. 1 under Order XLI Rule 27 read with Section 151 of CPC., praying to receive the documents mentioned in the I.A, after condoning the delay in producing the same.

In the affidavit it is stated that, prior to entering into Partnership Deed dated 05-11-2012, he had obtained Building Licence for the construction of the building in his name as a proprietor of Adarsh Construction and Consultants in pursuance of Agreement of Sale marked as Ex.R.4 and Agreement marked as Ex.R.5. The documents now sought to be produced would show the falsity of the contention of the Respondent and would enable this Court to arrive at just conclusion. Inspite of his exercise of due diligence, the said document could not be produced before the Arbitrator as the original of the said document was misplaced in the office of his

earlier advocate. It is only after consultation of his present advocate I have felt the necessity of producing the said document in the panchayath office of Handadi and recently, he could obtain the certified copy of the said document from the said Panchayath. The non-production of the said document before the arbitrator is unintentional and bonafide and for the reasons stated above. No prejudice would be caused to the other side if these documents are permitted to be produced before this Court. Hence, prays to allow IA No.1.

The Respondent No.1 has filed objections on IA No.1 and it is stated that the application is false, frivolous and not maintainable both on facts as well as on law. There is no merits in the above application and Petitioner with an intention to drag the matter and to delay the above proceedings, filed the present application which is liable to be dismissed. The production of document at this stage is not permissible under law and the petitioner in order to misguide the Court filed the documents which is no way connected to above case. The above case is filed by the plaintiff challenging the arbitration award passed by Arbitrator Hon'ble Retired District Judge Shri. Moosa Kunhi Nayarmooole I.e defendant No.2 in the above case. That the above case now posted for Arguments and the plaintiff with the intention to delay the matter has produced unconnected documents with the sole intention to drag the proceedings as much as he can. The plaintiff being son-in-law and daughter of

defendant no.1 has fraudulently created partnership deed and by which plaintiff has taken away the valuable property rights of Defendant No.1 in Sy.No.30/8 and 30/10 of Handady Village, Udupi measuring 55 cents of land on Defendant No.1's contribution to the capital of Partnership firm M/s Adarsha Construction and Consultants created by Plaintiff No.1, subsequently on knowing about wrong committed by Plaintiff, the Defendant No.1 filed arbitration case and in the said case award was passed in favour of Defendant No.1 by declaring partnership deed M/s. Adarsha Construction and Consultants was created by Plaintiff No.1, to commit fraud upon Defendant No.1. Besides the aforesaid 55 cents of land, the Plaintiff No.1 has also fraudulently obtained the execution of settlement deed in the year 20-06-2014 from the hand of Defendant No.1 and thereby got transferred 16 cents land and house property in Sy.No.30/22 of Handady Village in the name of Plaintiff No.2 which was owned by Defendant No.1 and later dispossessed the Defendant No.1 and her husband from the property for which Defendant No.1 has filed separate case under Senior Citizen Act and in which District Magistrate/District Commissioner passed an order for the resumption of 16 cents land in the name of Defendant No.1 by settling aside the settlement deed which was executed by fraud. That as against the said order of District Magistrate/District Commissioner, the Plaintiff has preferred an appeal to Hon'ble High Court of Karnataka in WP No.29446/2017 and the Hon'ble High Court in its

Judgment dated 29.08.2024 has pleased to uphold the order passed by the District Magistrate by concluding that property of Defendant No.1 was taken away by the Plaintiff fraudulently. The said settlement deed is marked as Ex.R.72 in the Arbitration Case No.5/2019 by the Plaintiff. The application is devoid of merits and production of unconnected false documents by the Plaintiff will prejudice the case of Defendant No.1. Hence, prays dismiss the IA No.1 with costs.

Heard on IA No. 1 and perused records.

The learned counsel for the Petitioner has produced building licence for the construction of the Apartment in the name of the 1st Petitioner.

This Petition is filed challenging the arbitral award passed by respondent No.2. Petition U/sec.34 of the said Act is not an Appeal. Further, Petitioner's reason for non production of the said document before the tribunal, which is said to be a vital document does not show justified cause. The said documents fails to reflect the date of obtaining the said copy.

In the authority relied by the learned counsel for the Petitioner reported in 2022 AIR (SC) 1372 in case of Sanjay Kumar Singh -Vs- State of Jharkhand- observed, where additional evidence sought to be adduced removes the cloud of doubt over the case and evidence has a direct and important bearing on main issue and interest of justice clearly renders it imperative that it may be allowed to be permitted on record, such application may be allowed. Appellate court may also consider,

whether or not it requires the additional evidence so as to enable it to pronounce the judgment or for any other substantial cause of like nature.

It is true, general principle that Appellate Court should not travel outside the record of lower court and cannot take evidence in appeal. However, as an exception, O 41 R 27 of CPC enables the Appellate court to take additional evidence in exceptional circumstances.

This case was pertaining to the appeal filed before the Hon'ble High Court of Jharkhand, challenging the refusal to enhance the amount of compensation for the acquisition.

As stated, present petition is not an appeal and also differs in facts with that of the authority relied.

In WP No.29446/2017 dated 29.08.2024 furnished by the learned counsel for the respondent No.1 between Smt. Vandana Shedthi and another -Vs- Smt. Varijakshi Hegadthi and others, Hon'ble High Court of Karnataka has observed, it do not see any error or irregularity in respondent No.3 in allowing the appeal filed by respondent Nos.1 and 2 in exercise of his power U/Sec.5 and 23 of the Act of 2007 and consequently setting aside the order passed by respondent no.4 and further annulling the deed of settlement dated 20.6.2014 and has dismissed the petition.

For the above reasons, I proceed to pass the following:

Order

I.A. No.I u/O.XLI R.27 read with 151 of CPC filed
by the Petitioner is hereby dismissed.

For arguments by 07-03-2025.

IV Addl. District & Sessions Judge,
D.K., Mangaluru