

**BEFORE THE COMMERCIAL COURT & II ADDL DISTRICT &
SESSIONS JUDGE, MYSURU, AT: MYSURU.**

Present: Sri.Hosamani Pundalik,
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru.

Dated this the 29th day of June 2022

Com.Ex.No.145/2021

Decree holder :

M/s TBS India Telematic and Biomedical Services Private Limited, A company incorporated under the Companies Act, 1956, having its registered office at 5th Floor, Arden Fair, Opposite to Bennignahalli Ring Road Flyover, Pai Layout, Near Tin Factory, Old Madras Road, Bengaluru – 560 016 repled. By its authorized signatory Mr.Justin Sebastian.

(By Sri.K.N.N, Adv.)

/vs/

Judgment debtors:

Arogya Yoga Samsthe (Suyog Hospital) A partnership Firm registered under the Indian Partnership Act, 1932, having its office at No.P/2, Dakshineshwara Road, E & F Block, Ramakrishnanagar, Mysuru. 570 022. repled by its Partners Dr.S.P.Yoganna and Mrs.Sudha Yoganna.

(By Sri.M.B, Adv)

Order on I.A.**Applicant / Decree Holder :**

Arogya Yoga Samsthe (Suyog Hospital) A partnership Firm registered under the Indian Partnership Act, 1932, having its office at No.P/2, Dakshineshwara Road, E & F Block, Ramakrishnanagar, Mysuru. 570 022. repled by its Partners Dr.S.P.Yoganna and Mrs.Sudha Yoganna.

Respondent / Judgment Debtor :

M/s TBS India Telematic and Biomedical Services Private Limited, A company incorporated under the Companies Act, 1956, having its registered office at 5th Floor, Arden Fair, Opposite to Bennignahalli Ring Road Flyover, Pai Layout, Near Tin Factory, Old Madras Road, Bengaluru – 560 016 repled. By its authorized signatory Mr.Justin Sebastian.

Order on IA Under Order 21 Rule 31 R/w.151 CPC

This is an application filed by the Decree Holder against the Judgment Debtors to direct the Judgment Debtor to deliver medical equipments as described in schedule I and II belonging to the Decree Holder and are in possession of the Judgment Debtor in the interest of justice.

2. The case of the parties in brief is as under:

It is stated in the affidavit filed along with interim application by one Justin Sebastian that he is authorized signatory of the Decree Holder company and authorized to represent the company before the Court. Further it is stated that the Decree Holder has filed execution petition for executing Judgment and Decree passed by the Hon'ble High Court of Karnataka dated 21.9.2021 Commercial Appeal No.52/2021. Further it is stated that Decree Holder and Judgment Debtor had entered into a user Fee agreement dated 29.6.2017 whereby the Decree Holder had supplied and installed various medical equipments in the hospital run by the Judgment Debtor. Further it is stated that the medical equipments i.e., the functioning in the hospital of the Judgment Debtor belongs entirely to the Decree Holder. There was a settlement between Decree Holder and Judgment Debtor in commercial Appeal No.52/2001 in terms of memorandum of settlement entered into between the parties. As per clause 5 of the terms of settlement Decree Holder would be entitled to take back the medical equipments supplied by it as per schedule No.1 of the settlement agreement dated 30.11.2021. as per clause 2 (v) of the settlement agreement in the event of there being any default in the aove payments the Decree Holder would continue to retain and enjoy acute ownership of the medical equipments listed in the schedule 2 of the agreement and the

Judgment Debtor would have no right to purchase the said equipment and Decree Holder would have right to repossess all the equipments shown in the schedule II of the agreement. Since the Judgment Debtor has failed to make payments of Rs.3,36,00,000/- to the Decree Holder on or before 28.10.2021. the Judgment Debtor has lost the option of choosing by the equipments listed in the schedule II at the rate agreed upon. Further it is stated that the Judgment Debtor has defaulted on its obligation as per the terms of memorandum of settlement dated 18.9.2021 and is not forthcoming to pay the amount that were agreed and Judgment Debtor has also refused to return the medical equipments listed in the schedule I of the settlement agreement. And prayed to allow the application for delivery of medical equipments listed in schedule I and II of the accompanying application in the interest of justice.

3. Per contra, the Judgment Debtor filed objection and memo stating that the objection filed to main petition may be treated to objection to I.A. the objection filed by the Judgment Debtor is to the following effect:

the execution petition filed by the Decree Holder is not maintainable either in law or on facts and the same is liable to be dismissed. The Decree Holder has not maintained its application in accordance with law. The

Decree Holder has brought execution petition against the firm and as such, Decree Holder should have maintain the petition under the provisions provided in the chapter of execution of Decree and orders. The Decree Holder has concealed the facts that the company has purchased by one Althea Groups during the subsistence of the user free agreement. The said facts has been concealed by the Decree Holder during the Decree Holder and Judgment Debtor. The said fact came to the knowledge of the Decree Holder very recently. The Decree Holder has not approached the Court with clean hands. The Decree Holder has no *lucusstandi* to maintain the execution petition and prayed to dismiss the petition.

4. Thereafter, I have heard arguments advanced by the learned counsel for the Decree Holder and that of the learned counsel for the Judgment Debtor.

5. The points that would arise for my consideration in this case are as under:

- 1) Whether the application filed by the Decree Holder under Order 21 Rule 31 R/w 151 CPC for direction to the Judgment Debtor to deliver the medical equipments as described in schedule I and II of the accompanying application in terms of settlement in Commercial

Appeal No.52/2021 deserves to be allowed ?

2) What Order?

6. My findings to the above points are as under:

Point No.1 : In the Affirmative

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

REASONS

7. **Point No.1** :- It is pertinent to note that the Decree Holder company has preferred commercial Appeal bearing Commercial Appeal No.52/2021 (AA) before the Hon'ble High Court of Karnataka and there was a settlement between the parties as per settlement the Hon'ble High Court of Karnataka disposed off Appeal in terms of agreement entered into between the parties dated 18.9.2021. It is pertinent to note that as per clause 5 of the settlement the Appellant shall entitled to take back from the premises of the Respondent (Suyog hospital) at the convenience of the Appellant all the medical equipments supplied by it as detailed in schedule 1 on or before 13.11.2021. and as per clause 2 and 5 the Respondent agreed in the event of default in any of the above 3 payments shown in clause 3 - (i)(ii)(iii) above the Appellants have continue to retain the enjoy the absolute ownership of the medical equipments listed in

schedule II. Further it is agreed that however in the event of such default if any on part of the Respondent to so pay the Appellant shall have right to reposses all the medical equipments listed in the schedule II.

8. It is pertinent to note that the Judgment Debtor neither complied with the terms of the settlement nor paid any amount to the Decree Holder. Under the circumstances the Decree Holder is entitled to repossess the medical equipments as described in schedule I and II in terms of settlement entered into by the Decree Holder and the Judgment Debtor in Commercial Appeal No.52/2021 dated 21.9.2021. The contention of the Judgment Debtor the application filed by the Decree Holder is not maintainable cannot be accepted. It is pertinent to note that in terms of settlement in Commercial Appeal No.52/2021 dated 21.9.2021 on th file the Hon'ble High Court of Karnataka the Judgment Debtor liable to return the the medical equipments as shown in schedule I and II of the accompanying application as the Judgment Debtor not complied with the terms of settlement. Hence, I hold that the application filed by the Decree Holder under Order 21 Rule 31 R/w 151 CPC for direction to the Judgment Debtor to deliver the medical equipments as described in schedule I and II of the accompanying application in terms of settlement in Commercial Appeal No.52/2021 dated 21.9.2021 deserves to

be allowed. Hence, I answered **Point No.1 in the Affirmative.**

9. **Point No.2:-** In view of my findings on the above Point No.1, I proceed to pass the following:

ORDER

The application filed by the Decree Holder company under Order 21 Rule 31 R/w 151 CPC for direction to the Judgment Debtor to deliver the medical equipments as described in schedule I and II of the accompanying application in terms of settlement in Commercial Appeal No.52/2021 is allowed with costs of Rs.10,000/-.

The Judgment Debtor (Suyog hospital) is directed to handover the medical equipments as described in the schedule I and II of the accompanying application in terms of settlement in Commercial Appeal No.52/2021 forthwith without fail.

(Dictated to the Judgment Writer directly on computer and then pronounced in the open court on this the 29th day of June 2022)

(Hosamani Pundalik)
Presiding Officer,
Commercial Court & II Addl. District &
Sessions Judge, Mysuru

