

KAUK010011772021



**IN THE COURT OF THE PRL.DISTRICT & SESSIONS JUDGE,
UTTARA KANNADA, KARWAR.**

DATED THIS THE 3rd DAY OF JANUARY-2023

COMMERCIAL O.S NO:10/2021

PRESENT: **Sri.D.S.Vijaya Kumar,**
B.Sc., LL.B.,
Prl. District and Sessions Judge,
Uttara Kannada, KARWAR.

PLAINTIFF:
M/s Concan Specialised Engineering
Services, (Represented by its Partner
Mr.Pretam J Masurkar).
(By Sri.S.H.Tamse., Advocate)

Vs.

DEFENDANT:
M/s Damodar Timber Depot.,
(Represented by its partner
Mr.Jayantilal D Patel)
(By Sri.G.N.J Advocate)

ORDERS ON IA.V

The defendant has filed IA.V under Order XI Rule 5 of CPC 1908 seeking to call for records and proceedings of case bearing Commercial OS No.1/2022 which was disposed of by this Court on 13/6/2022 and to attach the same to the present suit and to pass the order directing the plaintiff to place on record, the said alleged second original copy of the said agreement

dated: 22/2/2016 and the present suit be dismissed in case of non-production of the documents by the plaintiff.

2. The brief averments made in IA.V filed by the defendant are that, the plaintiff has filed the commercial suit for recovery of balance money out of the contract agreement. The plaintiff and defendant were in contractual agreement dated" 22/2/2016 wherein the plaintiff was supposed to build a go-down and factory building for a cashew processing factory at Vasare-Kudergi village of Ankola Taluka, Uttar Kannada District, with a total cost of Rs.1,30,00,000/-. The said suit was disposed off by an order dated: 13/6/2022. The plaintiff in reply to the defendant's application under Order 7 Rule 11 wherein at page 2, point No.7 stated that there were two original sets of said agreement. The defendant herein has under its possession of original agreement dated:22/2/2016 under certificate No.IN-KA-035733186021670 issued on 16/2/2016 at 01:11 P.M and that the notarised copy of the same is produced before this Court at Sl.No.1 of the list of documents dated: 7/1/2020. The plaintiff has not produced the said alleged original second copy of the said agreement as claimed by the plaintiff in the said case Commercial OS No.1/2020 nor in the present case and hence the present application before this Court as the said agreement relates to the matter in question of the present suit. The said

agreement dated: 20-2-2016 is a vital, important, just and necessary document to adjudicate and finally dispose off the present suit, without which the present legal proceedings herein before this Court cannot be adjudicated and finally concluded. Non production of the said agreement by the plaintiff, herein will cause great hardship, financial loss and prejudice to the defendant herein wherein no hardship of whatsoever in nature shall be caused to the plaintiff herein if the said document is produced.

3. The plaintiff has filed objections to the IA.V and has contended that the application filed by the defendant is contrary to law and true facts of the case and the same is liable to be dismissed in limine with costs. Further contended that the plaintiff had initiated a suit against the defendant in OS No.1/2022 with reference to the agreement dated: 22/2/2016 against the defendant is altogether different and no way concocted and contrary to this matter. The said agreement is in the different name i.e., Concan Engineering Consultants and is a different entity altogether even though the procurator of the same is the present petitioner in this matter. It is true that the said suit was disposed off by this Court on 13/6/2022. The agreement is prepared in duplicate in the original sets and the plaintiff has the original copy and the other original copy is with

the defendant and the said original copy has been produced in this suit. The defendant is trying to mislead the Court and should be put to strict proof of the same. It is false to state that the plaintiff has not produced the original second copy in commercial OS No.1/2020. The defendant is unnecessarily dragging the matter of OS No.1/2020 which has been already decided by this Court and trying to waste the valuable time of this Court. The defendant has filed this application only to drag the proceedings. Hence prayed to dismiss the application filed by the defendant.

4. In the circumstances, following points arise for determination:

1) Whether the defendant is entitled for the relief as sought for in IA.V?

2) What Order?

5. My finding on the above points are as under:

Point No.1: In [the Negative](#).

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

REASONS

6. **Point No.1:** I have perused the IA.V filed by the defendant, objections filed by the plaintiff and documents available on record.

7. It is an admitted fact the plaintiff had filed another suit in Commercial OS No.1/2022 against the defendant/applicant. According to the applicant / defendant in the said suit it had filed an application under Order VII Rule 11 of CPC for rejecting the plaint and the plaintiff herein had filed statement of objection on the said application by contending that there were two original sets of agreement and the one is with the defendant herein and another is with the plaintiff. So now the defendant / applicant contends that there is actually only one original agreement dated: 22-2-2016 and the same is with the defendant and the plaintiff has not produced the alleged second original of the said agreement and therefore the entire records in OS NO.1/2022 which has been disposed on 13/6/2022 must be summoned for considering the same in this case.

8. The plaintiff who admits that the Commercial OS No.1/2022 had been filed by it with reference to the agreement dated 22/2/2016 contends that the said matter is altogether different and the same is not connected to this matter and both the agreements are different and the agreement pertaining to commercial OS No.1/2022 is in different name i.e., Konkan Engineering Consultant which is a different entity. The plaintiff / opponent states that the agreement has been prepared in duplicate in original sets and the plaintiff has the original copy

and the other original copy is with the defendant and the the said original copy has been produced in this case. The plaintiff / opponent further states that the defendant has produced the said original in this case and it is not a notarised copy, but the defendant is trying to mislead the Court.

9. On considering the above contentions, it is seen according to the defendant/ applicant in Commercial OS No.1/2022 while filing the objections on its application under Order VII Rule 11 of CPC, the plaintiff has contended that there are two original sets of the agreement. The said contention mentioned in the Statement of Objection on the said IA is not disputed by the plaintiff / opponents herein. Therefore, merely for proving said averments in the statement of objection which had allegedly been filed by the plaintiff the need for summoning the entire records in OS NO.1/2022 does not arise. If necessary the defendant / applicant can obtain a certified copy of the statement of objection which plaintiff herein had filed on the defendant's IA under Order VII Rule 11 of CPC and produced the same before this Court. It is not the case of the defendant/ applicant that the original agreement which is mentioned in this case is lying in Commercial OS No.1/2022 and hence the same should be summoned. Therefore, in the facts and circumstances, I am of opinion that there is no merit in the application for

summoning the records in OS No.1/2022 and for direction to the plaintiff to place on record the second original copy of the agreement dated: 22/2/2016. Infact the plaintiff in the objections filed on this application states that it had original copy of the agreement and the same has been produced in the suit. The agreement dated:22/2/2016 is actually not in dispute and the plaintiff is admitting that the defendant has produced the original agreement dated: 22/2/2016 and the plaintiff is not claiming that the alleged second set original which is with the plaintiff is at variance with the agreement mentioned by the the defendant/ applicant. Consequently, point No.1 is answered in the Negative.

10. **Point No.2:** On the above findings, I proceed to pass the following:

:ORDER :

The IA.V filed under Order XI Rule 5 of CPC by the defendant/ applicant is here by dismissed.

Order pronounced in the open court vide detailed order.

ORDER

The IA.V filed under Order XI Rule 5 of CPC by the defendant/ applicant is here by dismissed.

Prl.District and Sessions Judge,
Uttara Kannada, Karwar.

