NC: 2026:KHC:11980
WP No. 6104 of 2026

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 6104 OF 2026 (GM-CPC)

BETWEEN:

SRI DINESH HEBBALE
S/O RAJAPPA,
AGED ABOUT 54 YEARS,
R/AT NO. 516, GROUND FLOOR,
SITUATED AT KALYANI, 14TH MAIN,
19TH CROSS, BANASHANKARI 2ND STAGE
BENGALURU-560 070
ALSO AT: R/AT 2379/1,
2ND FLOOR, CHAMARAJA MOHALLA,
K.G. KOPPAL, MYSURU CITY,
MYSURU.

...PETITIONER

(BY SRI. KRISHNA SWAMY, ADVOCATE FOR
SRI. ARUN.C.BHAT, ADVOCATE)

AND:

SRI M SHIVAKUMAR
S/O LATE MUDDAPPA,
AGED ABOUT 84 YEARS,
DIRECTOR, MAAKALA IMPEX AND
SOLAR SYSTEM PVT.LTD.
NO. K-49, OLD NO. 149,
3RD FLOOR, RAMAVILAS ROAD
MYSURU – 570 001.

...RESPONDENT

THIS W.P IS FILED UNDER ARTICLE 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DTD 16.12.2025 PASSED ON APPLICATION NO. 10 PASSED IN COM. O.S NO. 182/2022 BY THE HONBLE PRL. DISTRICT AND SESSIONS JUDGE MYSORE AS PER ANNX-A.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the defendant in Com.O.S.No.182/2022 is directed against the impugned order dated 16.12.2025 passed on I.A.No.10 by the Prl. District and Sessions Judge, Mysuru (for short "the Trial Court"), whereby the said application filed by the petitioner-defendant under Order I Rule 10(2) CPC to implead three persons as additional defendant Nos.2 to 4 in the suit was rejected by the Trial Court.

2. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

3. A perusal of the material on record will indicate that the respondent-plaintiff instituted the aforesaid suit against the petitioner-defendant seeking recovery of a sum of Rs.4,08,71,110/- together with interest and for other reliefs. The said suit is being contested by the defendant, who not only opposed the claim of the plaintiff, but also contented that some of the amounts claimed by the plaintiff was not paid to the petitioner-defendant but paid to the proposed defendant Nos.2 to 4. Under these circumstances, the

petitioner sought for impleadment of aforesaid proposed defendants as additional defendant Nos.2 to 4 to the suit by filing the instant application. The said application having been opposed by the respondent plaintiff, the Trial court proceeded to pass the impugned order dismissing the application filed by the petitioner, who is before this court by way of the present petition.

4. Before adverting to the rival contentions, it would be necessary to extract the pleadings of the parties which are as under:

*"**PLAINT UNDER ORDER VII RULE 1 & 2 OF THE CODE OF CIVIL PROCEDURE***

The Plaintiff above named respectfully submits as follows:-

1. That the addresses of the parties for the purpose of service of court notices, summons etc., of this Hon'ble Court as furnished above in the cause title is correct and Sufficient and also that of the Plaintiff's Counsel Sri. Dr.R.D.Kumar, Sri. T.P.Dharmendra, R.D.Kumar Law Associates, Advocates, Legal Service, Kannada Sahithya Kalakoota, 1st Main Road, B.B.Garden, Mysuru, Karnataka.

2. It is submitted that, the Plaintiff is the Proprietor of Maakala Implex & Solar Systems Pvt. Ltd., situated at Ramavilas Road, Mysuru.

3. It is submitted that the Plaintiff is the Proprietor of Maakala, Maakala & Company, Maakala Implex Pvt. Ltd., and Shilpa Enterprises. The Plaintiff is also an entrepreneur who was made good name and fame in the District of Mysuru and also in neighboring District. The Plaintiff is in the solar business since many years and the Defendant is the Proprietor of Excellent Solar, the Office situated at Chamaraja Double Road, Chamaraja Mohalla, Mysuru, and also having office at Bengaluru.

4. It is further submitted that, the Plaintiff was inducted and influenced to invest in the Solar Power Project of 25MW in total 300MW by the Defendant good office to which he is the Proprietor. The Defendant promised the Plaintiff that the Defendant has accumulated good properties at Harangi Road (Layout) about 50-00 Acres, Koppa Layout 22-00 Acres, Hongirana Estate, Shanivarasanthe 50-00 Acres and also the Defendant own a house at Kushalnagara measuring 30 x 40 feet. The Defendant also further promised the Plaintiff that, he owns and have leased huge properties for the purpose of solar projects in and around Karnataka. By saying so, the Defendant guided and took the Plaintiff to Challakere in Chitradurga District and another place at Gadag for the purpose of establishing the Solar Projects. Believing in the Defendant words and after many sittings the Plaintiff after many negotiations with the Defendant expressed his desire and wishes to invest considerable amount for the said project. After many sittings and negotiations the Defendant made the Plaintiff to believe that the solar project would *take off within no time and the Plaintiff would benefit from the said project in a considerable way.*

5. The Plaintiff submits that, the Defendant promised the Plaintiff that he has a tie up with many Solar Power Projects and Companies owned by Government of India. Saying so, the Defendant lured the Plaintiff to invest in some fake Companies, which were not in existence by creating the same on to himself, thereby hoodwinking the Plaintiff to invest in those Companies. MNRE, New Delhi, NTPCL WNL, Solar Energy Corporation were the Companies created by the Defendant himself and there were no such Companies and it was later on came to the knowledge of the Plaintiff that those are the fake Companies created by the Defendant just to lure the customers for investment.

6. The Plaintiff submits that, he had entered into an Agreement with the Defendant Company with a tie up with the Government Solar Energy Systems, which had the idea of installing solar power projects at Solar Power Park initiated by Government of India. One such Company being Jawahar Lal Nehru National Solar Machine under the brand name SOLAR INDIA and under the Ministry of New & Renewable Energy (Grid Solar Power Division). The Defendant being one of the pioneers in Solar Energy Projects began to hoodwink the Plaintiff that the solar power projects would come up in Karnataka in any place, which has been approved by the Plaintiff.

7. The Plaintiff submits that, for the said project, the Defendant has requested and directed the Plaintiff to invest sum of Rs.4 Crores and assure profit of Rs.3,00,000/- per day. Accordingly, the Plaintiff has paid the following sum to the Defendant as per the list furnished below from the Plaintiff's Company to the Defendant Company and to the Defendant. Herewith furnished the particulars of the payment made by the Plaintiff's Company Maakala Impex and Solar Systems Pvt. Ltd., to the Defendant Company Excellent Solars as stated below:-

Date	Particulars	Mode of Payment	Debit (Rs. Ps.)
28.05.2019	MNRE New Delhi	D.D.	33,04,000-00
14.06.2019	NTPCL-WNL	D.D.	33,04,000-00
04.07.2019	Solar Energy Corporation	D.D.	33,04,000-00
03.09.2019	Yes Bank, Account No. 04528300000900	Through RTGS	7,00,000-00
11.09.2019	Yes Bank, Account No. 04528300000900	Through RTGS	10,00,000-00
19.09.2019	Yes Bank, Account No. 04528300000900	Through RTGS	10,00,000-00
10.10.2019	Yes Bank, Account No. 04528300000900	Through RTGS	25,00,000-00
18.10.2019	Yes Bank, Account No. 04528300000900	Through RTGS	30,00,000-00
31.10.2019	Yes Bank, Account No. 04528300000900	Through RTGS	10,00,000-00
16.11.2019	Yes Bank, Account No. 04528300000900	Through RTGS	25,00,000-00
07.02.2020	By Shivakumar	Through RTGS	9,00,000-00
12.02.2020	By Shivakumar	Through RTGS	75,00,000-00
19.02.2020	By Shivakumar	Through RTGS	20,00,000-00
02.03.2020	Shilpa Enterprises		30,00,000-00
02.03.2020	Maakala & Company		20,00,000-00
07.02.2019	Cash paid by Shivakumar at Kushalnagar		13,02,000-00
02.07.2020	Cash paid by Shivakumar at Kushalnagar		6,00,000-00
	160 KVA Generator difference amount to be transferred from the Defendant to the Plaintiff where the Defendant had		6,25,944-00

	taken the Generator		
		Total	***3,95,39,944-00***

Soon after the Defendant got the above said amount by receiving the same personally and also to this Company, the Defendant began to evade the Plaintiff.

Subsequently, the Plaintiff learnt that, the Defendant is not in a position to install any power projects nor commissioning the said project within the time given to the Plaintiff. Inspite of receipt of the said amount from the Plaintiff, the Defendant began to postpone the projects by giving one reason or the other and the Defendant has defaulted in the assurance given to the Plaintiff. That as per the assurances given by the Defendant, the Plaintiff waited for the projects to come up as per the assurance given by the Defendant. But as the solar project could not come up within the definite time, the Defendant began to postpone the repayment of the amount to the Plaintiff by one way or the other. Many letter correspondences have taken place between the Defendant and the Plaintiff and the Plaintiff in one of the letter the Defendant has also been intimated by the Plaintiff that no amount has been received from the Defendant. Agreement dated 10-01-2022 entered into by the Plaintiff and the Defendant speak volumes a copy of it which is also in the Defendant possession need not be again reproduced in this legal notice. Terms and conditions of the said Agreement the Defendant also aware of. The said Agreement in short has been called as EPC Agreement, to which the Defendant also the signatory. After many repeated requests, as the Plaintiff did not repose any *confidence in the Defendant with respect to the solar project began to demand the repayment of the amount paid to the Defendant. The Plaintiff has been trying to contact the Defendant and the Plaintiff calls many a time have been evaded and there was no reply.*

8. It is submitted by the Plaintiff that, the Defendant has collected the money with a deceitful and fraudulent intention to cheat the Plaintiff. After many requests the Defendant has issued the following cheques and the cheques detail are given as hereunder:-

Bank	Cheque No.	Date	Amount (Rs. Ps.)
Axis Bank	122149	10.11.2021	50,00,000-00
Axis Bank	122150	20.11.2021	50,00,000-00
Axis Bank	122151	30.11.2021	50,00,000-00
Axis Bank	122152	10.12.2021	50,00,000-00
Axis Bank	122153	20.12.2021	50,00,000-00

All the cheques that have been issued in favour of the Plaintiff Company have been returned as 'ACCOUNT CLOSED' The said endorsement has been issued to the Plaintiff by his Banker viz., HDFC Bank, Saraswathipuram Branch, Mysuru. Still the Defendant owe considerable amount being Rs.3,95,39,944/- in favour of the Plaintiff, for which the Defendant is giving lame excuses directing the Plaintiff to come one day after the other.

9. It is further submitted that the Plaintiff so many times approached the Defendant to repay the said amount along with interest from the date of borrowal of the amount *by the Defendant. But the Defendant has postponed the same by giving one or other reason. Thereafter the Plaintiff got issued legal notice to the Defendant on 05-02-2022 and the Defendant has refused to claim the said notice. Without any alternative the Plaintiff has approached this Hon'ble Court for recovery of suit claim amount.*

*10. **PARTICULARS OF SUIT CLAIM:-***

a) Principal amount	*Rs.*	*3,95,39,944-00*
b) Interest due from 02.07.2020 to 08.03.2022 @ 2% p.m.	*Rs.*	*13,31,166-00*
c) Legal Notice charges	*Rs.*	*1,000-00*
d) Miscellaneous charge	*Rs.*	*1,000-00*
Total	*Rs.*	*4,08,73,110-00*

11. The cause of action for this suit arose on and from 28-05-2019 to 02-07-2020 on which date the Defendant has borrowed the amount from the Plaintiff, on 05-02-2022 being the date of legal notice and subsequently which comes within the jurisdiction of this Honourable Court where the suit transaction had taken place.

12. The Deed of Partnership referred above have been entered in Mysuru and the payment of money have also been made in Mysuru and hence this Court has jurisdiction to try the above suit.

13. For the purposes of Court fee and jurisdiction the suit is valued at Rs.4,08,71,110/- and the Court fee of is paid herewith, which is correct and Rs. sufficient.

Wherefore, the Plaintiff most humbly prays that this Hon'ble Court be pleased to pass a Judgment and Decree in favour of the Plaintiff as against the Defendant for recovery of a sum of Rs.4,08,71,110/- (Rupees Four Crores Eight Lakhs Seventy One Thousand One Hundred and Ten only), thereby directing the Defendant to pay the said amount along with Court cost and future interest at the rate of 24% p.a. from the date of suit till realization and such other reliefs, as this Hon'ble Court deems fit to grant under the circumstances of this case, in the interest of justice and equity."

"WRITTEN STATEMENT FILED BY THE DEFENDANT UNDER ORDER 8 RULE 1 OF C.P.C

The Defendant is beg to submit as follows.

1. The suit filed by the plaintiffs is upon fabricated allegation, concocted facts as well as created allegation, which are neither true nor correct and not maintainable under law, the entire plaint allegation are contrary to material facts, material evidence. The suit filed by the plaintiff is barred under law, not maintainable on fact the suit filed by the plaintiff is a total misuse of the process of law.

2. It is submitted that, the averments made in para 2 & 3 of the plaint is true and correct.

3. It is submitted that, the averments made at para 4 of the plaint that, are all false, the defendant never forced the plaintiff to invest money in solar project, the plaintiff only came forward and invest in the Solar Project all the averments made in same para are all false faraway from truth, the plaintiff is put to strict proof of the same.

3. It is submitted that, the averments made in para 5 of the plaint that, is false and faraway from the truth, the plaintiff intentionally stated for the purpose of filling suit, the plaintiff is put to strict proof of the same.

4. It is submitted that, the averments made in para 6 of the plaint that, are all false and the plaintiff is put to strict proof of the same. The defendant worked in Solar Project as a mediator only.

5. It is submitted that, the averments made in para 7, 8,9,10 of the plaint, are all false and faraway from the truth the plaintiff is put to strict proof of the same.

9. It is submitted that, there is no cause of action to file the above suit. The cause of action mentioned in the para No. 11 is invented for the purpose of filling the false suit. As well as this honorable court has no jurisdiction to try the above suit. On this ground alone the suit of the plaintiff is liable to be dismiss with exemplary cost.

10. It is submitted that, the court fee paid by the plaintiffs is not sufficient and the plaintiffs is not valued the suit schedule properties as mentioned in para 13 of the *plaint, on this ground alone the suit of the plaintiff is liable to be dismissed with exemplary cost.*

*11. **<u>The defendant respectfully submits as follows</u>**.*

a). It is submitted that, in the month of April 2018, one Vikran Thimmaiaih was introduced One Sanjay, the resident of Bangalore, by that time the said Sanjay, stated that, he was running the office at his own resident under the name and style Anushree Green Tec India Pvt.Ltd, under the said company, he was introducing the Solar Power plants under the Central Govt Scheme "Jawahar Lal Neharu National Solar Mission and showed and explained the details in website.

b).It is submitted that, the said Sanjay further stated and assured that, if the defendant is interested to do Solar Plant then he will provide all the sanction, permission from the MNRE, NTPCVVNL, SECI, RBI clearance, Project loan and EPC work. And further stated that, after completion of 1 stage of project, the defendant has to pay fee to Govt and other expenses, after completion of the project at the time of handing over the project, the defendant has to pay 10% Commission to the said Sanjay.

c). It is further submitted that, if anybody interested to establish one Mega Watt solar power, they have obtain minimum 5 acre of land, or they can take the land for lease for a period of 25 years from the land lord. And further the Said Solar Plant could not establish in the name of individual, in view of that, to establish company, and *registered the same, thereafter through Vikram Thimmalaih the said Sanjay, several time approached the defendant and explained with respect to Solar Power Project.*

d). It is submitted that, after several meeting between the defendant and Sanjay, the defendant decided to establish the Company, in the month of July 2018 the defendant establish the company, under the name and style Excellent Solar. To establish 10 Mega Watt Solar Power under the Excellent Solar Company, the defendant transferred a sum of Rs. 50,74,000/- (Rupees Fifty lakh Seventy Four Thousand Only).

e). It is further submitted that, there after the said Sanjay suggested to the defendant that to, involve others to establish the Solar plant, if other individuals involved then the cost of the project will less. As well as offered the defendant to give 5% Commission in 10% of his Commission. The defendant agreed because it will help to Project as well as it is the Central Govt project. In view of that, the defendant approached their known persons and explained with respect to the Solar Project. But never forced to anybody to invest in the Solar Project.

f). It is further submitted that, at the time of investing the amount all the individuals are transferred the amount to the defendant Company because Sanjay was Stanger to them, there after the defendant transferred the amount to Sanjay's Account, the defendant transferred for a sum of Rs. 11.30,00,000/- (Rupess Eleven Crore Thirty Lakh), after few days the customers stated that, the above said project *is the Central Govt Project in view of that, they will invest money through Demand Draft, by that time the defendant intimated to the same with Sanjay, Sanjay also agreed and stated that, they have to take Demand draft in the name and favor of 3 institution i.e., 1). MNRE, 2) NTPCVVNL 3) SOLAR ENERGY CORPORATION, as per the Instruction of the Sanjay the defendant Obtained DD from the individuals and given to the Sanjay.*

g). It is submitted that, as per the instruction of the Sanjay the defendants and other customers have paid the Govt fee, and other expenses was paid by the defendant and other customers to the account of Sanjay, as well as by way of cash the defendant acted upon the instruction of the Sanjay.

h). It is submitted that, as per the instruction of the Sanjay, started to searching the land to establish Solar Project and selected the landed property at Challakere, Chithradurga District, measuring 800 acres, and Kamandalagundi Vilalge, Chithradurga District, measuring 900 acres, in this regard the mortgage deed was entered between the formers and Excellent Solar Company, and the defendant paid a sum of Rs.25,000/- as rent, per acre for per year.

i). It is submitted that, earlier was also decided that, after establishment of The Solar Power Project as per the investment of the customer, the land will transferred to their names. These facts is also well within the knowledge of the plaintiff.

j). It is submitted that, the defendant never misused the invest of any person, this defendant never made any false promise to neither the plaintiff nor other customers, and never forced anybody to invest the individuals directly. amount in Solar Project. The defendant acted upon the instruction of the Sanjay. This defendant not at all received any amount from any individual directly.

k). It is submitted that, This plaintiff is also voluntary came and invested the amount in Solar Project. And defendant not at all made any agreement, this defendant gave the agreement which was given by the Sanjay to him. The plaintiff not at all paid any amount to the defendant. In view of that, the defendant is not at all liable to pay any suit claim amount to the plaintiff.

l). It is submitted that, the said Sanjay cheated the defendant, not at all provided any facilities from the Govt in time, due to which the defendant faced severe financial difficulties, there after it came to the knowledge of the defendant that, the Sanjay concocted, fabricated all the documents and cheated the defendant, by utilizing the defendant's hard earned money as well as public money.

12. It is submitted that, after few days all the customers/investors started to made galata with the defendant because of delaying the establishment, by that time the defendant narrated the entire facts with the other investors as well as this plaintiff and trying to convince the Investor & this plaintiff, but it went in vein.

13. It is submitted that, due to illegal and unlawful act of the Sanjay, the defendant closed his company (Excellent Solar Company), there after some of the investor made complaint against this defendant before police the said police was frieze the Excellent Solar Company account, as well as Seized the documents., now the company is not at all is in existence. In view of that, neither the defendant nor the Excellent Solar Company is liable to pay the suit claim amount to this plaintiff in this regard without alternative the defendant lodged a complaint against the Sanjay. Before Commissioner of Police, Mysuru, the police have also taken the steps against the Sanjay, and seized air the documents/papers from his house, then only it came to knowledge of the defendant that, the Sanjay was fabricated/concocted all the documents, papers, which was shown by Sanjay at the time of first meeting with the defendant.

14. It is submitted that. The plaintiff suppressed all these material facts and approached this Honorable court with unclean hands on this Ground alone the suit of the plaintiff is liable to be dismiss with exemplary cost.

15. It is submitted that, this defendants reserve his right to file additional written statement on ascertaining material documents, and material evidence, or any other parties to the proceedings.

Wherefore the defendants most respectfully prays that, this Honorable Court may kindly be pleased to dismiss *the suit filed by the plaintiff with cost, in the interest of justice and equity."*

5. A perusal of the pleadings of the parties will indicate that though the petitioner has put forth certain defences/contentions against the respondent-plaintiff, the pleadings do not disclose that the proposed defendants are proper and necessary parties to the suit in which the respondent-plaintiff is a *dominus litus* and in the light of the principles laid down in the ***M/s. J.N. Real Estates Vs. Shailendra Pradhan – 2025 INSC 611*** and ***NAK Engineering Co. Ltd Vs. Tasun Keshrichand & ors – 2026 INSC 8*** that the plaintiff being the *dominus litus* cannot be compelled to implead persons claiming independent right over the suit schedule properties, I am of the considered opinion that the Trial Court was fully justified in dismissing the application filed by the by the petitioner-defendant under Order I Rule 10 to CPC by holding as under:

*"**ORDER ON IA NO.10***

This IA is filed when the case was posted for cross examination of PW.1.

2. Defendant has filed IA No.10 under Order 1 Rule 10(2) of CPC, seeking permission to implead the proposed defendants No.2 to 4 as defendants in the suit.

3. It is stated in the affidavit annexed to IA that, plaintiff has filed suit for recovery of money in order to make unlawful gain. He has filed written statement to bring the true facts before the Court and he has averred that plaintiff has intentionally concealed the role of Mr. Sanjay who is the director of Anushree Green Tech India Pvt. Ltd., and invested the amount for solar power project. Plaintiff has invested amount for solar project with Sanjay and hence, he is a necessary party in the case. Further, proposed defendants are also actively involved in the activities of solar power project. The proposed defendant Sanjay R.N. was running the office in the name and style of Anushree Green Tech India Pvt. Ltd., and his wife Anitha Sanjay is actively involved in the said business. Hence, they are necessary parties in the case. If application is not allowed, it will be put to great hardship and irregularities. Hence, prayed to implead the persons named in the application as defendants to this case.

4. Plaintiff has filed objections stating this interim application has been filed just to delay the proceedings and facts stated in the affidavit are unscientific and has got no value in the eye of law. The proposed defendants are no where named in the written statement. The defendant has issued cheque for the legal transaction and this fact has been admitted in the written statement. Defendant has *intentionally cheated the plaintiff. Already criminal cases of cheating have been registered against defendant at Kushalnagar Court, wherein he has obtained bail. In the reply to legal notice issued prior to filing of this suit defendant has not stated any of these facts. With an intention to cheat the plaintiff and to make unlawful gain defendant has come up with this application. The proposed defendants have got no any sort of financial transaction with the plaintiff. If this application is allowed, since plaintiff is a senior citizen and defendant has cheated him for crores together, he will be put to great hardship. Hence, prayed to reject the IA.*

5. Heard both sides. Perused the materials on record.

6. The points arise for my consideration are;

1. ***Whether impleading proposed defendants No.2 to 4 as defendants in this suit is necessary?***
2. ***What Order?***

7. My findings on the above points are as under:

Point No.1	*::*	*In the **negative**,*
Point No.2	*::*	*As per final order for the following:*

<u>REASONS</u>

*8. **<u>Point No.1</u>**: In order to show that persons named in the application are necessary parties, defendant drew the attention to Para No.4 and 5 of the plaint. On reading of Para No.4 and 5 of the plaint it appears that, plaintiff by* *believing the defendant, invested the huge amount for solar power project. It is pleaded in the plaint that defendant has falsely made him to believe that he has got tie up with solar power projects and companies owned by Government of India, thereby lured him to invest in some fake companies, which were not in existence. For easy reference Para No.4 and 5 of the plaint are reproduced here below.*

> *"4. It is further submitted that, the plaintiff was induced and influenced to invest in the Solar Project of 25MW in total 300MW by the defendant good office to which he is the Proprietor. The defendant, promised the plaintiff that the defendant own defendant has accumulated good properties at Harangi Road (Layout) about 50-00 Acres, Koppa Layout 22-00 Acres, Hongirana Estate,Shanivarasanthe 50-00 Acres and also the defendant own a house at Kushalnagara measuring 30X40 feet. The defendant also further promised the plaintiff that, he owns and have leased huge properties for the purpose of solar projects in and around Karnataka. By saying so, the defendant guided and took the plaintiff to Challakere in Chitradurga District and another place at Gadag for the purpose of establishing the Solar Projects. Believing in the defendant words and after many sittings the plaintiff after many negotiations with the defendant expressed his desire and wishes to invest considerable amount for the said project. After many sittings and negotiations the defendant made the plaintiff to believe that the solar project would take off within not time and the plaintiff would benefit from the said project in a considerable way.*
>
> *5. The plaintiff submits that, the defendant promised the plaintiff that he has tie up with many Solar Power Projects and Companies owned by Government of India. Saying so, the defendant lured the plaintiff to invest in some fake Companies, which were not in existence by*

> *creating the same on to himself, thereby hoodwinking the plaintiff to invest in those Companies. MNRE, New Delhi, NTPCL WNL, Solar Energy Corporation were the Companies created by the defendant himself and there were no such Companies and it was later on came to the knowledge of the plaintiff that those are the fake Companies created by the defendant just to lure the customers for investment".*

9. Thereafter defendant drew the attention to Para No.11(e) and (f) of the written statement. In the written statement at Para No.11(e) and (f) it is averred by the defendant that, one Sanjay had suggested him to involve others to establish the Solar Plant and if others are involved, cost of project will be less. Hence, he had agreed for the same as it is the Central Government Project. Therefore, he had approached known persons, but has not forced anyone. But thereafter defendant had transferred an amount of Rs.11,30,00,000/- to the bank account of the said Sanjay. After that the customers told him that since it is a Central Government Project, they will invest money through Demand Draft. By that time defendant intimated the same to Sanjay, who had agreed for the same and they have to take Demand Draft in the name and favour of Institution I.e., MNRE, NTPCVVNL and Solar Energy Corporation as per the instruction of Sanjay. Defendant had obtained DD from the individuals and given it to Sanjay. Further, the above said Paras in the written statement also reproduced here below for the convenience.

> *"e). It is further submitted that, there after the said Sanjay suggested to the defendant that to, involve others to establish the Solar Plant, if*

other individuals involved then the cost of the project will less. As well as offered the defendant to give 5% commission in 10% of his commission. The defendant agreed because it will help to project as well as it is the Central Government Project. In view of that, the defendant approached their known persons and explained with respect to the Solar Project. But never forced to anybody to invest in the Solar Project.

f). It is further submitted that, at the time of investing the amount all the individuals are transferred the amount to the defendant Company, because Sanjay was Stranger to them, there after the defendant transferred the amount to Sanjay's Account, the defendant transferred for a sum of Rs.11,30,00,000/- (Rupees Eleven Crore Thirty Lakh), after few days the customers stated that, the above said project is the Central Government Project in view of that, they will invest money through Demand Draft, by that time the defendant intimated to the same with Sanjay, Sanjay also agreed and stated that, they have to take Demand Draft in the name and favour of 3 institution i.e., 1)MNRE, 2) NTPCVVNL 3) Solar Energy Corporation, as per the instruction of Sanjay, the defendant obtained DD from the individuals and given to Sanjay".

10. On further reading of the plaint it is clear that, on various dates plaintiff has made payment to the defendant company Excellent Solars detailed below:-

Date	***Particulars***	***Mode of***	***Debit***

		Payment	**(Rs. Ps.)**
28.05.2019	*MNRE New Delhi*	*D.D.*	*33,04,000-00*
14.06.2019	*NTPCL-WNL*	*D.D.*	*33,04,000-00*
04.07.2019	*Solar Energy Corporation*	*D.D.*	*33,04,000-00*
03.09.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*7,00,000-00*
11.09.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*10,00,000-00*
19.09.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*10,00,000-00*
10.10.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*25,00,000-00*
18.10.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*30,00,000-00*
31.10.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*10,00,000-00*
16.11.2019	*Yes Bank, Account No. 04528300000900*	*Through RTGS*	*25,00,000-00*
07.02.2020	*By Shivakumar*	*Through RTGS*	*9,00,000-00*
12.02.2020	*By Shivakumar*	*Through RTGS*	*75,00,000-00*
19.02.2020	*By Shivakumar*	*Through RTGS*	*20,00,000-00*
02.03.2020	*Shilpa Enterprises*		*30,00,000-00*
02.03.2020	*Maakala & Company*		*20,00,000-00*
07.02.2019	*Cash paid by Shivakumar at Kushalnagar*		*13,02,000-00*
02.07.2020	*Cash paid by Shivakumar at Kushalnagar*		*6,00,000-00*
	160 KVA Generator difference amount to be transferred from the Defendant to the Plaintiff where the Defendant had taken the Generator		*6,25,944-00*
Total			*3,95,39,944-00*

11. When defendant has failed to repay the same, on repeated requests he had issued cheques detailed below:-

Bank	**Cheque No.**	**Date**	**Amount (Rs. Ps.)**

Axis Bank	122149	10.11.2021	50,00,000-00
Axis Bank	122150	20.11.2021	50,00,000-00
Axis Bank	122151	30.11.2021	50,00,000-00
Axis Bank	122152	10.12.2021	50,00,000-00
Axis Bank	122153	20.12.2021	50,00,000-00

12. Further, according to plaintiff, there is an agreement entered into between him and the defendant and no where it is stated that defendant has made payment to other persons who own Solar Companies. Moreover, if any such payment is made by the defendant it is not in agreement with the plaintiff and it is a separate and independent transaction by the defendant. This shows that in order to stay away from the liabilities, defendant is introducing new persons in this transaction.

13. It is not irrelevant to note here that, plaintiff is a senior citizen and all the time he appears before the Court and requests the Court to proceed with the case without giving adjournment to the defendant. Order sheet reveals that initially once matter was also posted for final arguments on 31.05.2024 and thereafter defendant has come up with IA and on 21.06.2024 got reopened the side of plaintiff for cross examination. Order-sheet speaks clearly that he had Type not only harassing the plaintiff and dragging the proceedings, but also troubling the Court to carry on with the smooth going of Court proceedings. This is nothing but abuse of process of law. Several times cost also imposed on the defendant. Further, on each day matter has been repeatedly called, but there was no proper cooperation from the side of defendant continue the proceedings. On several occasion, he also sought *adjournment on the pretext of settling the matter and also change of counsel. These aspects have to be viewed very seriously.*

*14. For the aforesaid reasons, I opine that proposed defendants are not necessary parties and this application is nothing but an attempt to prolong the matter and hence, deserves to be rejected with cost. Accordingly, point No.1 is answered in the **negative**.*

*15. **POINT No.2**: For the reasons stated above, I 022 proceed to pass the following:*

ORDER

IA No.10 filed by the applicant/defendant under Order 1 Rule 10(2) of CPC, is hereby rejected with cost of Rs.10,000/-."

6. As can be seen from the material on record including the impugned order, the Trial Court came to the correct conclusion that there was no legal or that there was no privity of contract between them as can be seen from the impugned order. The respondent-plaintiff having made specific allegations against only the petitioner-defendant, without reference to the proposed defendants, the proposed defendants cannot be said to be either proper or necessary parties to the suit and the impugned order passed by the Trial Court cannot be said to suffer from any illegality

or infirmity nor can the same be said to be capricious or perverse or having occasioned failure of justice warranting interference by this Court in exercise of its jurisdiction under Article 227 of the Constitution of India as held by the Apex Court in the cases of ***Radhey Shyam Vs. Chhabi Nath – (2015) 5 SCC 423, K.P. Natarajan Vs. Muthalammal – AIR 2021 SC 3443 and Mohammed Ali Vs. Jaya – (2022) 10 SCC 477.*** Accordingly, I do not find any merit in the petition and the same is hereby disposed of without interfering with the impugned order.

7. Insofar as the various contentions and defences put forth and urged by the petitioner in the present petition is concerned, it is needless to state it would be open for the petitioner to ventilate its grievances and put forth all those contentions/contentions, defences etc. either by way of cross-examination of the plaintiff and its witnesses or by adducing defence evidence or by summoning the proposed defendants as witnesses in support of the defence of the petitioner.

8. Insofar as the cost of Rs.10,000/- imposed by the Commercial Court is concerned, in the peculiar/unique/special facts and circumstances obtaining in the instant case, I deem it just and

appropriate to waive/dispense with the payment of cost by the petitioner -defendants.

9. In the result, I pass the following:

ORDER

(i) The petition is hereby disposed of without interfering with the impugned order insofar as it relates to dismissing the application, I.A.No.10 filed by the petitioner is concerned.

(ii) The imposition of cost of Rs.10,000/- on the petitioner by the Commercial Court is hereby waived.

(iii) Liberty is reserved in favour of the petitioner to put forth and urge all defences in the suit, in accordance with law.

(iv) All rival contentions on all aspects of the matter are kept/left open and no opinion is expressed on merits/demerits of the rival contentions.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC
List No.: 2 Sl No.: 45