



NC: 2026:KHC:16666-DB
RFA No. 2073 of 2023

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

PRESENT

HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

HON'BLE MS. JUSTICE TARA VITASTA GANJU

REGULAR FIRST APPEAL NO. 2073 OF 2023 (MON)

BETWEEN:

AMEMAR ABDUL RAZAK
S/O ABDUL KHADAR,
AGED 56 YEARS,
BUSINESSMAN,
R/AT NEAR TALUK OFFICE,
POLICE STATION,
B.C.ROAD, BANTWAL TALUK,
D K-574 219.

...APPELLANT

(BY SRI. M.B.CHANDRACHOODA., ADVOCATE)

AND:

SRI. A.SRINIVAS RAO
S/O A.RAGHAVENDRA RAO,
AGED 56 YEARS,
BUSINESSMAN,
G.H.S.ROAD, MANGALURU-575 001.

...RESPONDENT

(BY SRI. RAKESH.B.BHAT., ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 OF CPC, AGAINST THE JUDGMENT AND DECREE DATED 20.07.2023. PASSED IN OS.NO.296/2017 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, MANGALURU, D.K, DECREETING THE SUIT FOR RECOVERY OF MONEY.

Digitally signed by
SUMATHY KANNAN
Location: HIGH
COURT OF
KARNATAKA



THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY,
JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
&
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL JUDGMENT

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. The present appeal seeks to challenge the judgment and decree dated 20.07.2023, passed by the learned Principal Senior Civil Judge and CJM, Mangaluru, D.K. in O.S.No.296/2017 (hereinafter referred to as 'Impugned Judgment').

2. By the Impugned Judgment, the learned Trial Court has awarded the respondent/plaintiff a sum of Rs.87,36,000/- along with interest at 10% *pendente lite*, as well as 8% future interest. The payment is to be made by the appellant herein.

3. The learned counsel for the appellant/defendant raises three contentions. He submits that the money was



allegedly borrowed by the respondent/plaintiff and it was returned by the respondent/plaintiff by way of a bank transfer received by the appellant/defendant. Secondly, he contends that the award of interest was not in accordance with the provisions of Section 34 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC'). Lastly, the learned counsel for the appellant/defendant submits that he was not given any opportunity to place his defence before the learned Trial Court and thus, the matter should be remanded.

4. The learned counsel for the respondent/plaintiff on the other hand contends that the money was paid by the respondent/plaintiff to the appellant/defendant by a bank transfer, in view of a purchase that the respondent/plaintiff required to make. He further submits that no loan was taken by the respondent/plaintiff from the appellant/defendant that was required to be returned. The learned counsel for the respondent/plaintiff further contends that the payment was made through a bank



account and the respondent/plaintiff has placed evidence in this regard. Lastly, he submits that despite opportunity being granted to the appellant, he did not cross-examine the respondent/plaintiff nor produce any evidence in support of his contentions.

5. On the question of interest, the learned counsel for the respondent/plaintiff submits that since it was for a commercial transaction, the interest should be awarded at commercial rates. Thus, he contends that the Impugned Judgment is not required to be interfered with.

6. The Impugned Judgment sets out that it is the case of the respondent/plaintiff that he wanted to establish a hotel business and engaged the services of the appellant/defendant for allotment of a BDA approved site. On the asking of the appellant/defendant, the respondent/plaintiff remitted a sum of Rs.87,36,000/- to the bank account of the appellant/defendant. The receipt of this payment was confirmed by the



appellant/defendant. However, the allotment did not take place. In view thereof, the respondent/plaintiff filed a suit for recovery of the money paid to the appellant/defendant.

7. In support of his contention, the respondent/plaintiff produced the bank receipt reflecting transfer through RTGS to the bank account of the appellant/defendant as Exhibit-P3, as well as the bank statement at Exhibit-P5. The respondent/plaintiff also placed on record the legal notice at Exhibit-P1, as well as its postal receipt. The requisite certificate under Section 65 of the Indian Evidence Act, 1872 was also placed on record.

8. The learned Trial Court has further found that although the defendant took a defence that has been averred before this Court as well, he has neither come forward to cross examine the plaintiff (PW-1), nor led any evidence on his own behalf, which would controvert the oral and documentary evidence placed on record by the respondent/plaintiff.



9. The position before this Court is not different. No document or material has been placed on record before this Court by the appellant/defendant in support of his contentions raised. Since no document or new evidence has been placed on record by the respondent/plaintiff, there will be no question of remanding the matter to the learned Trial Court. The learned Trial Court has already examined all evidence that has been placed on record by the parties.

10. However, on the issue of interest, the learned Trial Court has awarded 10% *pendente lite*, as well as 8% future interest. Given the fact that no evidence was placed by the respondent/plaintiff either showing that there was a written agreement between the parties for payment of such interest, nor was it a commercial transaction, this Court deems it apposite to reduce the interest awarded to 6% per annum in terms of Section 34 of the CPC, which reads as follows:



"34. Interest — (1) Where and insofar *as a decree is for the payment of money, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid* on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, [with further interest at such rate not exceeding six per cent, per annum as the Court deems reasonable on such principal sum, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit :

*[Provided that where the liability in relation to the sum so adjudged had arisen out of a **commercial transaction, the rate of such further interest may exceed six per cent, per annum, but shall not exceed the contractual rate of interest** or where there is no contractual rate, the rate at which moneys are lent or advanced by nationalised banks in relation to commercial transactions.*

[Emphasis Supplied]

11. Accordingly, the Impugned Judgment and decree is modified in the following manner:

- (i) The appeal is ***partly allowed.***
- (ii) The respondent/plaintiff is entitled to a sum of Rs.87,36,000/- along with 6% *pendente lite*, as well as future interest per annum.
- (iii) The Registry shall draw a modified decree in the foregoing terms.



- (iv) The amount deposited before this Court inclusive of interest upto date shall be released in favour of the respondent/plaintiff, towards satisfaction of the judgment and decree.
- (v) The respondent/plaintiff is also at liberty to take steps in accordance with law, towards the satisfaction of the Judgment and Decree.
- (vi) No order as to costs.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

JJ / YN
List No.: 1 Sl No.: 4



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

[AMEMAR ABDUL RAZAK VS. SRI A SRINIVAS RAO]

28.08.2026

(VIDEO CONFERENCING / PHYSICAL HEARING)

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER ON I.A. NO.1 OF 2026

(PER: HON'BLE MS. JUSTICE TARA VITASTA GANJU)

1. I.A.No.1/2026 has been filed seeking correction of typographical error in the Judgment and Award dated 24.03.2026, passed in RFA No.2073/2023 (hereinafter referred to as the "Judgment").

2. This Court had by the Judgment decided an appeal filed against the Judgment and Decree dated 20.07.2023, passed in O.S.No.296/2017, on the file of the Principal Senior Civil Judge and CJM, Mangaluru (hereinafter referred to as the "Impugned Judgment").

3. Learned counsel for the respondent/plaintiff has made two submissions. Firstly, he submits that there is a typographical error at paragraph 10 of the Judgment, in as



much as the award of 10% interest was pre-suit and not *pendente lite*. Secondly, he submits that pre-suit interest ought to have been awarded by this Court.

4. Given the order that this Court proposes to pass, there is no requirement of issuing notice in the matter.

5. It is the contention of the respondent that the Judgment passed by this Court contains a typographical error, in as much as the pre-suit interest has not been awarded by this Court, which was awarded by the learned Trial Court.

6. The contention of the learned counsel for the respondent/plaintiff is without merit. The record reflects that a suit for recovery of money was filed by the respondent/plaintiff. It was the case of the respondent/plaintiff that he had paid an amount of Rs.87,36,000/- (Rupees Eighty Seven Lakhs Thirty Six Thousand) to the appellant/defendant in pursuance of a promise to get an allotment of a Bengaluru Development



Authority (BDA) site, by using influence. On the other hand, it was the case of the appellant/defendant that the respondent/plaintiff had taken hand loan from the appellant/defendant which he had to return.

7. It is undisputed that there is no document produced in support of the reason for the payment made by the respondent/plaintiff to the appellant/defendant. The only evidence produced was the remittance via RTGS of the said amount of Rs.87,36,000/- passed by the respondent/plaintiff to the appellant/defendant. The claim of the respondent/plaintiff was also admitted in the evidence by the appellant/defendant.

7.1 Based on the evidence produced, the learned Trial Court passed an order dated 20.07.2023, awarding pre-suit interest @ 10% per annum, *pendente lite* and future interest @ 8% per annum, on the principle amount of Rs.87,36,000/-.



8. As stated above, this Court while deciding the challenge to the Impugned Judgment of the learned Trial Court has not interfered with the judgment except for directing that the amounts awarded shall carry *pendente lite* and future interest. No pre-suit interest was awarded.

9. The Supreme Court in the judgment in the case of ***Central Bank of India vs. Ravindra And Others***¹ while discussing the award of 'pre-suit' interest has held that unless there is an express agreement for such interest, the plaintiff can establish entitlement to pre-suit interest by proving mercantile usage; statutory right to interest or an implied agreement. The relevant extract is set out below:

"39. *Mulla on the Code of Civil Procedure (1995 Edn.) sets out three divisions of interest as dealt in Section 34 CPC. The division is according to the period for which interest is allowed by the court, namely,— (1) interest accrued due prior to the institution of the suit on the principal sum adjudged; (2) additional interest on the principal sum adjudged, from the date of the suit to the date of the decree, at such rate as the court deems reasonable; (3) further interest on the principal sum adjudged, from the date of the decree to the date of the payment or to such earlier date as the court thinks fit, at a rate not exceeding 6 per cent per annum. Popularly the three interests are called pre-suit interest, interest pendente lite and interest post-decree or future*

¹ 2001 SCC Online SC 1266



interest. Interest for the period anterior to institution of suit is not a matter of procedure; interest pendente lite is not a matter of substantive law (see Secy., Irrigation Deptt., Govt. of Orissa v. G.C. Roy [(1992) 1 SCC 508] SCC para 44-iv). Pre-suit interest is referable to substantive law and can be subdivided into two sub-heads: (i) where there is a stipulation for the payment of interest at a fixed rate; and (ii) where there is no such stipulation. If there is a stipulation for the rate of interest, the court must allow that rate up to the date of the suit subject to three exceptions: (i) any provision of law applicable to moneylending transactions, or usury laws or any other debt law governing the parties and having an overriding effect on any stipulation for payment of interest voluntarily entered into between the parties; (ii) if the rate is penal, the court must award at such rate as it deems reasonable; (iii) even if the rate is not penal the court may reduce it if the interest is excessive and the transaction was substantially unfair. If there is no express stipulation for payment of interest the plaintiff is not entitled to interest except on proof of mercantile usage, statutory right to interest, or an implied agreement. Interest from the date of suit to the date of decree is in the discretion of the court. Interest from the date of the decree to the date of payment or any other earlier date appointed by the court is again in the discretion of the court — to award or not to award as also the rate at which to award. These principles are well established and are not disputed by learned counsel for the parties. We have stated the same only by way of introduction to the main controversy before us which has a colour little different and somewhat complex. The learned counsel appearing before us are agreed that pre-suit interest is a matter of substantive law and a voluntary stipulation entered into between the parties for payment of interest would bind the parties as also the court excepting in any case out of the three exceptions set out hereinbefore.”

[Emphasis Supplied]



10. There is no evidence on record to show any agreement between the parties for the award of pre-suit interest nor is there any statutory right to such interest shown. Thus, the Judgment passed by this Court has awarded only *pendente lite* and future interest.

11. Thus, so far as the contention of the respondent/plaintiff is concerned on the award of pre-suit interest, the same is not a typographical or clerical mistake and is rejected.

12. However, the clerical error as appearing in the first sentence of paragraph No.10, of the Judgment dated 24.03.2026, is corrected to read as follows:

“However, on the issue of interest, the learned Trial Court has awarded 10% pre-suit, as well as 8% *pendente lite* future interest.”

13. In view of the foregoing discussion, I.A.No.1 of 2026 is partly allowed in the foregoing terms.



**NC: 2026:KHC:16666-DB
RFA No. 2073 of 2023**

14. The Judgment dated 24.03.2026, shall be read as is modified in terms of the order passed today.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(TARA VITASTA GANJU)
JUDGE**

KS/JJ
List No.: 1 Sl No.: 4