



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 3RD DAY OF DECEMBER, 2025
BEFORE
THE HON'BLE MR. JUSTICE S VISHWAJITH SHETTY
WRIT PETITION NO. 36643 OF 2018 (GM-CPC)

BETWEEN:

M/S SREE GURURAJA ENTERPRISES
PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE
PROVISIONS OF THE COMPANIES ACT, 1956
HAVING ITS REGISTERED OFFICE AT NO.173/174
SUBHEDHAR CHATRAM ROAD, SHESHADRIPURAM
BANGALORE - 560 020
REPRESENTED BY ITS MANAGING DIRECTOR
SRI YATHIVENDRA NAIK
S/O M.N. NARASIMHAMURTHY NAIK
AGED ABOUT 39 YEARS.

...PETITIONER

(BY SRI MADHUKAR M DESHPANDE, ADV.,)

AND:

1. M/S CIMEC ENTERPRISES
ENGINEERS AND CONTRACTORS
A REGISTERD PARTHNERSHIP FIRM HAVING ITS
OFFICE AT NO.34, 3RD MAIN, 7TH CROSS
BEML 1ST STAGE, BASAVESHWARANAGAR
BANGALORE - 560 079
REPRESENTED BY ITS MANAGING PARTNER
SRI B.N. NAGARAJU.
2. MR. B.N. NAGARAJU
S/O NOT KNOWN TO THE PETITIONER
AGED BY MAJOR
RESIDING AT "SHANTINIVAS"
HALASAHALLI ROAD
BEHIND POLICE STATION
VARTHUR, BANGALORE - 560 087.

ALSO AT PARTNER
M/S CIMEC ENTERPRISES





HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

NO.34, 3RD MAIN, 7TH CROSS,
BEML 1ST STAGE
BASAVESHWARANAGAR
BANGALORE - 560 079.

3. MR. P.S. MURALIDHAR
S/O NOT KNOWN TO THE PETITIONER
AGED BY MAJOR
RESIDING AT G-I, 148
AKSHAY MANSION
4TH MAIN, GOVINDARAJANAGAR
BANGALORE - 560 040.

ALSO AT
PARTNER M/S CIMEC ENTERPIRSES
NO.34, 3RD MAIN, 7TH CROSS
BEML 1ST STAGE, BASAVESHWARANAGAR
BANGALORE - 560 079.

4. MRS. P. ROOPARANI
W/O B.N. NAGARAJU
AGED BY MAJOR
RESIDING AT "SHANTINIVAS"
HALASAHALLI ROAD
BEHIND POLICE STATION
VARTHUR, BANGALORE - 560 087.

ALSO AT
PARTNER M/S CIMEC ENTERPIRSES
NO.34, 3RD MAIN, 7TH CROSS
BEML 1ST STAGE, BASAVESHWARANAGAR
BANGALORE - 560 079.

5. MRS. M. SHUBHA
W/O MR. P.S. MURALIDHAR
AGED BY MAJOR
RESIDING AT G-I, 148
AKSHAY MANSION
4TH MAIN, GOVINDARAJANAGAR
BANGALORE - 560 040.

ALSO AT
PARTNER M/S CIMEC ENTERPIRSES
NO.34, 3RD MAIN, 7TH CROSS



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

BEML 1ST STAGE, BASAVESHWARANAGAR
BANGALORE - 560 079.

6. MR. J.R. SRINIVASA
S/O LATE J.S. RAMESH
AGED ABOUT 41 YEARS
RESIDING AT "SUDARSHAN NILAYA
NO.5, CHAKRAVARTHY LAYOUT
PALACE CROSS ROAD
BANGALORE - 560 020.

...RESPONDENTS

(BY SMT. ANANDITHA S, ADV., FOR
SRI KIRAN V. RON, ADV., FOR C/R-6;
SRI S. SHIVASHANKARA, ADV., AND
SRI S. SUBRAMANYA, ADV., FOR R-1 TO R-5)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER
DTD:25.07.2018 PASSED BY THE XLIV ADDITIONAL CITY CIVIL AND
SESSIONS JUDGE, BANGALORE IN O.S.NO.6942/2011 (ANNEXURE-
A) AND DISMISSED THE APPLICATION FILED BY THE R-6 UNDER
SECTION 10 READ WITH SECTION 151 OF CODE OF CIVIL
PROCEDURE, 1908 (ANNEXURE-P)

THIS PETITION, HAVING BEEN RESERVEED FOR ORDERS ON
19.11.2025, COMING ON FOR PRONOUNCEMENT THIS DAY,
COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S VISHWAJITH SHETTY

CAV ORDER

1. This writ petition under Article 227 of the Constitution of India is filed with a prayer to set-aside the order dated 25.07.2018 passed on IA No.5 in O.S.No.6942/2011 by the Court of XLIV Addl. City Civil and Sessions Judge, Bengaluru.
2. Heard the learned counsel for the parties.



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

3. O.S.No.6942/2011 was filed before the jurisdictional Civil Court at Bengaluru by the petitioner herein with a prayer to direct the defendants jointly and severally to pay a sum of Rs.2,33,17,790/- with current and future interest at 18% p.a. from the date of suit till the date of realisation. The contesting defendants have filed written statement and opposed the suit claim. IA No.5 was filed by defendant No.6 in O.S.No.6942/2011 under Section 10 read with Section 151 of CPC, with a prayer to stay the further proceedings in O.S.No.6942/2011 till the disposal of RFA No.1025/2014 pending before this Court. The said application was opposed by the petitioner/plaintiff by filing objections. The Trial Court vide the order impugned has allowed IA No.5 and being aggrieved by the same, petitioner/plaintiff is before this Court.

4. Learned counsel for the petitioner having reiterated the grounds urged in the petition submits that issues raised in O.S.No.6942/2011 and in O.S.No.3290/2009 are totally different. The Trial Court has failed to appreciate this aspect of the matter. Petitioner had earlier filed an application to club the suits in O.S.No.3290/2009 and O.S.No.6942/2011 and the said



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

application was opposed by defendant No.6 and consequently, the application was rejected. Since the application filed by the petitioner herein to club both the suits was rejected, there is no justification in now staying the further proceedings in O.S.No.6942/2011 at the request of defendant No.6, who had earlier opposed clubbing of the two cases. Though both the suits are for recovery of money, the cause of action in both the suits are different. The application filed under Section 10 of CPC is after disposal of O.S.No.3290/2009 and therefore, the Trial Court ought not to have allowed the same. In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Prahlad Singh vs. Col. Sukhdev Singh - (1987) 1 SCC 727.***

5. He further submits that similar application was earlier filed on behalf of defendant Nos.1 to 5, which was rejected by the Trial Court on 08.08.2013. The principle of *res judicata* would apply even in respect of orders passed in a pending proceedings and therefore, the Trial Court was not justified in passing the order impugned. In support of his contentions, he has placed reliance on the judgment of this Court in the case of



Gokulam Farms and Estates Pvt. Ltd. & Another vs. Muneer Pasha - 2007 SCC OnLine Kar 810.

6. Per contra, learned counsel for respondent No.6/defendant No.6 has argued in support of the impugned order. She submits that issue Nos.2 and 4 in O.S.No.6942/2011 and additional issue No.4 in O.S.No.3290/2009 are one and the same. Challenging the finding recorded on issue No.4 in O.S.No.3290/2009, the parties are before this Court in RFA No.1025/2014 and RFA No.1067/2014, which are pending consideration. The appeal is continuation of the suit and Section 10 of CPC is applicable even at the appeal stage. She submits that a finding has been recorded in the earlier suit that there was no collusion between the plaintiff and defendant No.3 in O.S.No.3290/2009. She submits that the earlier application filed on behalf of defendant Nos.1 to 5 was rejected at the stage when evidence was being recorded on the ground that there is no bar for recording evidence. At that stage, no finding was recorded in O.S.No.3290/2009 with regard to additional issue No.4. Now, there is a change in circumstance and since a finding is already recorded in O.S.No.3290/2009 on the



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

additional issue, which is questioned before this Court in RFA No.1067/2014, the Trial Court was justified in passing the order impugned. In support of her arguments, she has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Arjun Singh vs. Mohindra Kumar and Others - (1963) SCC OnLine SC 43.**

7. Learned counsel for respondent Nos.1 to 5 has also argued in support of the order impugned and submits that object of Section 10 of CPC is to avoid parallel trial on the same issue to avoid conflicting findings on issues which are directly or indirectly in issue in the earlier suit. The principle of *res judicata* is applicable while considering application under Section 10 of CPC. In support of his arguments, he has placed reliance on the judgment of the Hon'ble Supreme Court in the following cases:-

1. *National Institute of Mental Health & Neuro Sciences vs. C. Parameshwara - (2005) 2 SCC 256.*
2. *V. Rajeshwari (Smt) vs. T. C. Saravanabava - (2004) 1 SCC 551.*



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

8. O.S.No.3290/2009 was filed by respondent No.1 herein and in the said suit, plaintiff in the present suit was arrayed as defendant No.1 and its directors were arrayed as defendant Nos.2 & 3. O.S.No.3290/2009 was filed for recovery of Rs.1,40,00,000/- with interest and also to declare the order of the Company Law Board, Chennai in Company Application No.13/2009 filed in Company Petition No.494/2008 was not binding on the plaintiff. According to the plaintiff in O.S.No.3290/2009, defendant Nos.2 and 3 had colluded with each other to defeat the claim of the plaintiff and therefore, had obtained an order from Company Law Board, wherein defendant No.3 was directed to hand over possession of the northern block of the hotel premises to defendant Nos.1 and 2. On the other hand, defendant Nos.1 and 2 had filed a written statement contending that plaintiff and defendant No.3 had colluded with each other and though the plaintiff had not actually carried out the work as per the Work Order dated 15.07.2008, suit was filed claiming payment of money in respect of the work which was not actually done. Based on the rival pleadings in O.S.No.3290/2009, the Trial Court had initially framed seven issues and subsequently, an additional



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

issue was also framed. The issues framed in O.S.No.3290/2009, reads as follows:-

"1. Whether the plaintiff proves that the 1st defendant company entrusted the renovation work of the schedule property by issuing work order dated 15.07.2008 for a total sum of Rs. 1,60,00,000/- as contended?

2. Whether the plaintiff further proves till date the defendants have paid a sum of Rs.20,00,000/-only though he almost completed major portion of renovation work?

3. Whether the Plaintiff proves that the 1st defendant in collusion with 2nd and 3rd defendant obtained orders of company law board to deceive the Plaintiff's dues?

4. Is the Plaintiff entitled to decree for a sum of Rs. 1,40,00,000/- as prayed for?

5. Is the Plaintiff entitled to a declaration that the order of company law board is not binding on him?

6. Whether the plaintiff is entitled to order of injunction as sought for?

7. What decree or order?

**Addl.Issue:**

1. Whether the 1st and 2nd defendants prove that the plaintiff has not actually carried out the work as per the work order dtd.15-7-2008 and same is the outcome of collusion between the plaintiff and 3rd defendant?"

9. The additional issue framed in O.S.No.3290/2009 has been answered in the negative and the suit was partly decreed and the defendants were directed to pay a sum of Rs.1 crore to the plaintiff with future interest at the rate of 6% p.a. from the rate of suit till realisation. Assailing the judgment and decree passed in O.S.No.3290/2009, plaintiff in the said suit has filed RFA No.1067/2014 and defendant Nos.1 & 2 in the said suit have filed RFA No.1025/2014, which are pending consideration before this Court.

10. O.S.No.6942/2011 is filed by defendant No.1 in O.S.No.3290/2009 and in the said suit, plaintiff in O.S.No.3290/2009 is arrayed as defendant No.1 and defendant No.3 in O.S.No.3290/2009 is arrayed as defendant No.6. O.S.No.6942/2011 is filed alleging that inspite of the order



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

dated 05.05.2009 passed by the Company Law Board, Chennai, in Company Petition No.494/2008 directing the parties to reopen the northern block of the Hotel premises owned by the plaintiff company, defendant No.6 in collusion with defendant No.1 had not deliberately handed over the possession of the northern block of the hotel premises and thereby, caused loss to the plaintiff company and accordingly, a decree was sought directing the defendants to pay a sum of Rs.2,33,17,790/ with interest at 18% p.a. The contesting defendants have filed separate written statement in the said suit and based on the rival pleadings, the Trial Court in O.S.No.6942/2011 has framed as many as 10 issues. Issue Nos.2 & 4 framed in OS No.6942/2011 reads as follows:-

"2. Whether the plaintiff further proves defendant No.1 and 6 colluded together to defeat the order of the company law board, dated:5-5-2009 filed O.S.No.3290/09 on the file of City Civil Court, Bangalore?

3. xxx

4. Whether the plaintiff further proves that the defendant No.1 illegally had squatted in the North



Block premises for the period between 5.5.2009 to 6.10.2010 and the prevented the plaintiff company to re-open and carry on the lawful business in 60 rooms of the North Block Hotel?"

11. Petitioner had filed an application in O.S.No.6942/2011 under Section 151 of CPC, on 04.07.2012, with a prayer to club O.S.No.6942/2011 with O.S.No.3290/2009 and conduct a common trial in both the suits. The said application was opposed by the respondents herein, who are defendants in O.S.No.6942/2011. The Trial Court by order dated 01.07.2013, had rejected the application filed on behalf of the petitioner herein to club both the suits, with an observation that evidence in both the suits are required to be recorded separately and the cause of action to both the suits are different. It was also observed that since the suits are pending before the same Court, the question of rendering conflicting judgments does not arise.

12. It is relevant to note here that defendant Nos.1 to 5 herein had earlier filed an application under Section 151 of CPC with a prayer to stay further proceedings in O.S.No.6942/2011, contending that issues framed in both the suits are



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

substantially the same and O.S.No.6942/2011 being the subsequent suit, further proceedings in the said suit is required to be stayed. The said application was opposed by the petitioner herein, who is the plaintiff in O.S.No.6942/2011. The Trial Court by order dated 08.08.2013 had rejected the said application. The said order has attained finality.

13. The Hon'ble Supreme Court in the case of **Satyadhyan Ghosal and Others vs. Deorajin Debi (Smt) and Another - AIR 1960 SC 941**, has observed in paragraph Nos.7 and 8 as follows:-

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.

8. *The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings..."*

(emphasis supplied)

14. In the case of **Arjun Singh (supra)**, the Hon'ble Supreme Court in paragraph No.12 has observed as follows:-

"12. ...Similarly, as stated already, though Section 11 of the Civil Procedure Code clearly contemplates the existence of two suits and the findings in the first being res judicata in the later suit it is well established that the principle underlying it is equally applicable to the case of decisions rendered at successive stages of the



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

same suit or proceeding. But where the principle of res judicata is invoked in the case of the different stages of proceedings in the same suit, the nature of the proceedings, scope of the enquiry which the adjectival law provides for the decision being reached, as well as the specific provisions made on matters touching such decision are some of the material and relevant factors to be considered before the principle is held applicable..."

15. In view of the observations made by the Hon'ble Supreme Court in the case of *Satyadhyan Ghosal (supra)* and in the case of *Arjun Singh (supra)*, since the earlier application seeking the very same relief, filed on behalf of defendant Nos.1 to 5 was dismissed by the Trial Court and the said order having attained finality, in my considered opinion, the Trial Court was not justified in passing the order impugned on the application of defendant No.6.

16. The Courts while rendering judgments or passing interim orders should maintain consistency. Judicial discipline and propriety largely depends on such consistency and the purpose and object behind the same is to prevent discrimination and arbitrariness. Otherwise, there is scope of being accused of



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

being partial, unfair and discriminatory. A judicial officer may have a different view on a point for consideration, but on the same point in the same proceeding if an order is already passed earlier, he is bound to maintain consistency. A judicial officer may err and pass illegal orders, but he should not pass inconsistent orders which would undermine the faith of general public in the institution.

17. The Trial Court has held that the earlier application seeking similar relief was filed by defendant Nos.1 to 5 whereas the present application is filed by defendant No.6 and therefore, second application can be maintained. The said approach of the Trial Court, in my considered opinion, is bad in law. The finding recorded on the earlier application filed seeking similar relief is binding on all the parties to the suit and it cannot be said otherwise, unless the relief sought for in the application is privy to the party making such an application, if not, any order made during the course of proceedings of the suit, which is general in nature, shall be binding on all the parties to the suit.



HC-KAR

NC: 2025:KHC:50505
WP No. 36643 of 2018

18. In the case of ***National Institute of Mental Health & Neuro Sciences*** (*supra*), the Hon'ble Supreme Court in paragraph No.8 has observed as follows:-

"8. The object underlying Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. The object underlying Section 10 is to avoid two parallel trials on the same issue by two courts and to avoid recording of conflicting findings on issues which are directly and substantially in issue in previously instituted suit. The language of Section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute. The object of Section 10 is to prevent courts of concurrent jurisdiction from simultaneously trying two parallel suits between the same parties in respect of the same matter in issue. The fundamental test to attract Section 10 is, whether on final decision being reached in the previous suit, such decision would operate as res judicata in the subsequent suit. Section 10 applies only in cases where the whole of the subject-matter in both the suits is identical. The key words in Section 10 are "the matter in issue is directly and substantially in issue" in the previous instituted suit. The words "directly



HC-KAR

**NC: 2025:KHC:50505
WP No. 36643 of 2018**

and substantially in issue" are used in contradistinction to the words "incidentally or collaterally in issue". Therefore, Section 10 would apply only if there is identity of the matter in issue in both the suits, meaning thereby, that the whole of the subject-matter in both the proceedings is identical."

19. Therefore, it is very clear that the fundamental test to attract Section 10 of CPC is, whether on final decision being reached in the previous suit, such decision would operate as *res judicata* in the subsequent suit. Section 10 applies only in cases where the whole of the subject matter in both the suits is identical. In the present case, the whole of the subject matter in both the suits are not identical. The additional issue framed in O.S.No.3290/2009 and issue Nos.2 and 4 framed in O.S.No.6942/2011, may have something in common but substantially, the said issues are different. The only factor that is common in the additional issue framed in O.S.No.3290/2009 and in the issue Nos.2 and 4 framed in O.S.No.6942/2011 is about collusion between defendant Nos.1 and 6 in O.S.No.6942/2011, who are the plaintiff and defendant No.3 respectively in O.S.No.3290/2009. Except the same, there is



nothing common in the aforesaid issues. The relief sought for recovery of money in the earlier suit and the relief sought for recovery of money in the second suit are for totally different period. In addition to the same, it is necessary to note here that there is already a finding recorded on the additional issue framed in O.S.No.3290/2009.

20. It is true that Section 10 of CPC is applicable even after disposal of the earlier suit, provided the judgment and decree passed in the earlier suit is assailed in appeal. However, if it is found that issues framed in the subsequent suit, was not directly or substantially in issue in the earlier suit, then Section 10 of CPC does not get attracted. The Trial Court has failed to appreciate this aspect of the matter.

21. Additional Issue in O.S.No.3290/2009 was about the genuineness in executing the work order dated 15.07.2008, since it was alleged that plaintiff and defendant no.3 in the said suit were in collusion and the said collusion was regarding execution of the work order. The alleged collusion in Issue no.2 in O.S.No.6942/2011 is totally different. Even Issue no.4 in O.S.No.6942/2011 is totally different from the Addl. Issue



framed in O.S.No.3290/2009. Under the circumstances, I am of the opinion that the Trial Court was not at all justified in passing the order impugned and therefore, the said order cannot be sustained. Accordingly, the following order:

22. The Writ Petition is allowed. The impugned order dated 25.07.2018 passed on IA No.5 in O.S.No.6942/2011 by the Court of XLIV Addl. City Civil and Sessions Judge, Bengaluru, is set-aside. Consequently, the prayer made in IA No.5 is rejected.

**Sd/-
(S VISHWAJITH SHETTY)
JUDGE**

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List No.: 1 Sl No.: 72