

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2025
(Arising out of SLP (C) NO. 26214 OF 2024)**

M/S. A.J. SHETTY AND CO. PVT. LTD.

...APPELLANT(S)

V.

**ST. ANTONY'S CHARITY INSTITUTES
AND OTHERS**

...RESPONDENT(S)

WITH

**CIVIL APPEAL NO. _____ OF 2025
(Arising out of SLP (C) NO. 26316 OF 2024)**

J U D G M E N T

B.R. GAVAI, J.

1. Leave granted.
2. The present appeals challenge the common judgment and final order dated 11th September 2024 passed by a Division Bench of the High Court of Karnataka at Bengaluru¹ in RFA No. 525 of 2018 (RES) connected with RFA No. 2328 of 2019 (SP) and RFA Cross Objection No. 1 of 2019. The High

¹ Hereinafter "High Court"

Court *dismissed with costs* the appeals² filed by the Appellant and confirmed the judgment and decree dated 15th February 2018 passed by the Court of III Additional Senior Civil Judge, Mangaluru, D.K.³ in O.S. No. 144 of 2011 and O.S. No. 162 of 2014.

3. The facts, *in brief*, giving rise to the present appeals are as given below.

3.1. On 20th August 1912, the Milagres Church granted a permanent lease in favour of Respondent No. 1 in connection with the suit property. The suit property consists of two items – an area of 1 Acre 18.50 cents in Sy. No. 173-A2 and another area of 0.52 cents in Sy. No. 174 at Attavara Village, Mangaluru Taluk.

3.2. On 23rd September 1961, a lease deed for the suit property was executed by Respondent No. 1 in favour of Respondent No. 3 for a period of 50 years. Respondent No. 3, thereafter, constructed a multi-storied building and started a business under the name of “*Hotel Motimahal*” on the suit property.

² RFA No. 525 of 2018 (RES) and RFA No. 2328 of 2019 (SP)

³ Hereinafter “Trial Court”

3.3. On 3rd February 1984, Respondent No. 3 by a sale deed conveyed the lease hold rights, all improvements, business of Hotel Motimahal along with the right to use the name to the Appellant.

3.4. On 12th October 2009, in view of the impending expiry of the lease deed, the Appellant wrote to Respondent No. 1 for renewal. The same was *rejected*.

3.5. On 10th October 2011, Respondent No. 1 filed a suit bearing O.S. No. 144 of 2011 in the Trial Court against the Appellant and Respondent No. 3 *inter-alia* praying for a direction to them to surrender vacant possession of the suit property, to pay *mesne* profits from 23rd September 2011 to 1st October 2011 at the rate of Rs. 1,00,000/- per day, to pay future *mesne* profits, etc.

3.6. On 1st March 2012, the Appellant also filed a suit bearing O.S. No. 165 of 2012 (later re-numbered as O.S. No. 162 of 2014) in the Trial Court against Respondent No. 1, *inter-alia*, praying for specific performance of a clause in the lease deed dated 23rd September 1961 for renewal of the term of lease, for a direction to Respondent No. 1 to renew the lease of suit

property for another term of 50 years on monthly rental to be fixed by the Court, etc.

3.7. On 15th February 2018, upon consolidation of the suits and recording of common evidence, the Trial Court by a common judgment *decreed* the suit filed by Respondent No. 1 and *dismissed with costs* the suit filed by the Appellant. The Appellant was directed to surrender the vacant possession of the suit property to Respondent No. 1; the Appellant and Respondent No. 3 were directed to jointly pay *mesne* profits from 3rd September 2011 to 1st October 2011 at the rate of Rs. 50,000/- per day and to jointly pay *mesne* profits from the date of suit till the date of delivery at the same rate. Respondent No. 1 was also entitled to recover the amount with interest at the rate of 15% per annum from the date of suit till realization.

3.8. Aggrieved by the dismissal of the suit filed by him, the Appellant filed an appeal bearing RA No. 11 of 2018 before the District Judge, Mangalore D.K. *Simultaneously*, the Appellant also filed a Regular First Appeal (RFA No. 525 of 2018) before the High Court *challenging* judgment and decree in favour of Respondent No. 1.

3.9. On 14th March 2018, the Principal District Judge, Mangalore D.K. admitted the appeal and allowed an application filed by the Appellant under Order XXXIX Rules 1 and 2 and Section 151 of the Code of Civil Procedure, 1908⁴. The Principal District Judge *directed* that the parties maintain *status quo* with regard to possession of the suit property on the condition that the Appellant pays/deposits an amount of Rs. 2,00,00,000/-.

3.10. On 27th March 2018, in the RFA (No. 525 of 2018) filed by the Appellant, a Division Bench of the High Court while admitting the appeal *prima facie* found that the finding regarding *mesne* profits is not supported by the evidence on record. The High Court, therefore, granted interim relief of stay of the judgment and decree dated 15th February 2018 on the condition that the Appellant deposits a further sum of Rs. 2,00,00,000/- before the High Court and continues to deposit a sum of Rs. 1,00,000/- per month pending the disposal of the appeal.

⁴ Hereinafter “CPC”

3.11. In 2019, the Regular Appeal (No. 11 of 2018) filed by the Appellant before the District Judge, Mangalore D.K. came to be transferred to the High Court and the same was renumbered as RFA No. 2328 of 2019.

3.12. Before the High Court, Respondent No. 1 filed a Cross Objection bearing RFA Cross Objection No. 1 of 2019 *for enhancement of mesne profit from Rs. 50,000/- per day to Rs. 1,00,000/- per day.*

3.13. On 11th September 2024, the Division Bench of the High Court, by the impugned judgment and final order, *dismissed* the appeals filed by the Appellant so also the Cross Objection filed by Respondent No. 1.

3.14. Aggrieved thereby the present appeals came to be filed in this Court by way of special leave.

4. On the first day itself, this Court by an order dated 11th November 2024 referred the matter for mediation. With the consent of the parties, the matter was referred to Hon'ble Shri Justice A.S. Bopanna – Former Judge of this Court.

5. On the second date, the parties reported that a settlement has been arrived at in the present matter.

A duly signed settlement agreement dated 31st January 2025 was also received by this Court.

6. The settlement agreement reads thus:

“This memorandum of settlement is entered into, on this the 31st day of January 2025 between M/s. A.J. Shetty & Co. Pvt. Ltd., by its Managing Director Sri. A.J. Shetty of the First Party and St. Antony’s Charity Institutes, Jeppu, Mangaluru represented by John Baptist Crasta at Bangalore.

The parties named above have agreed as follows;

1. The first party has accepted as final, the judgment and decree dated 15.02.2018 passed by the Court of Senior Civil Judge, Mangalore and upheld by the Hon'ble High Court of Karnataka by its judgment dated 11.09.2024, in so far as rejecting the prayer for specific performance and directing the first party to vacate and hand over vacant possession of the suit schedule premises.
2. In that view the first party has agreed to voluntarily vacate from the suit schedule premises within three months from this day i.e., on or before 30.04.2025. The second party has consented to the same.
3. The first party shall hand over vacant possession of the land and building constructed thereon, to the second party on ‘as is where is basis’.
4. The first party has assured the second party that the first party has not created any charge over the property towards any outstanding. If any amount is due to any person or authority in the process of conducting business from the suit schedule property, the first party alone

shall be liable and the suit schedule property shall not be the subject matter for any recovery in that regard.

5. In so far as the mesne profits as ordered by the Trial Court and upheld by the Hon'ble High Court, the parties in the process of negotiation have taken note of the vagaries involved in business, the expenses incurred and also the intervening COVID-19 pandemic when all category of business had come to a standstill.
6. Hence the second party has agreed to receive the mesne profits at the reduced rate, which is also an incentive for the first party to voluntarily vacate from the schedule property in a short duration as agreed above, without driving the second party to secure possession through execution proceedings.
7. In that light, in modification of the decree for mesne profits, the first party shall now pay the mesne profits calculated at the rate of Rs.23,000/ per day from 03.09.2011 onwards till the date of vacating from the suit schedule premises. The said amount shall not attract interest.
8. It is agreed between the parties that the first party had deposited the amount before the Appellate Court and High Court pursuant to the order passed by the Hon'ble High Court as well as Appellate Court. The second party has withdrawn sum of Rs. 3,29,29,224/- from the said amount and the balance is lying in deposit before the Appellate Court and High Court respectively.
9. In view of this settlement entered into between the parties, the first party has no

objection for the second party to withdraw the said amount with accrued interest.

10. On such adjustment of the deposited amount towards the mesne profits agreed between the parties, the first party shall remain liable to pay the balance amount towards full and final settlement of the mesne profits.
11. The said amount shall be paid by the first party to the second party in one lumpsum or by way of instalments, but the entire balance amount in any event shall be paid on or before.30.04.2026, Bank Guarantee for the same shall be furnished by the First Party.
12. That the parties further agree that if the above stated balance mesne profit amount is not paid on before the date as agreed above, the said balance amount shall attract interest at 18% per annum calculated from 2011 till the date of payment.
13. In that view the parties agree that the judgment and decree be modified in terms of this memorandum of settlement.”

7. It was, however, submitted by Shri P. Vishwanatha Shetty, learned Senior Counsel appearing on behalf of the Appellant, that the Appellant is running a Hotel Management Institute⁵ in the name of “*Moti Mahal College of Hotel Management*” at the suit property and that in light of the settlement arrived at with Respondent No. 1, the Appellant is

⁵ Hereinafter “Institute”

now required to vacate the suit property on or before 30th April 2025.

8. It was submitted by the learned Senior Counsel that the Appellant intends to shift the Institute permanently to land bearing Sy. No. 2/18(P), 2/19(P) Bolooru-B Village, Mangalore City Corporation Limits, Mangalore⁶. It was, however, submitted that the campus at the new location is not yet ready and so in the interregnum the Appellant has made an arrangement to shift the Institute to property at Sy. No. 183A1B1(P), No. 89A, Kodialbail Village, Mangalore City Corporation Limits, Mangalore⁷.

9. It was submitted by the learned Senior Counsel for the Appellant that at present there are 240 students enrolled in the Institute. It was submitted that by completing the course, the students would have very good prospects for employment. It was further submitted that as per the settlement agreement arrived at between the parties, the Appellant does not have enough sufficient time to directly move to the new location which would have satisfied the requirements of All India

⁶ Hereinafter “new location”

⁷ Hereinafter “temporary location”

Council for Technical Education⁸. It was, however, submitted that the temporary location where the Appellant proposes to shift the Institute will satisfy all the other facilities which are required to be provided to the students for academic excellence.

10. The learned Senior Counsel lastly submitted that if the Appellant is not allowed to shift to the temporary location, for a period not exceeding 2 years, the students who are already admitted to the degree course will be put to a lot of hardship and inconvenience. It was, therefore, prayed that this Court issue appropriate direction to the AICTE and the Mangalore University to permit the Appellant to shift to the temporary location and to continue to operate the course there for a period not exceeding 2-years.

11. In this regard the Appellant sought permission to implead the AICTE and Mangalore University as party-respondents. The same was allowed by this Court by an order dated 21st February 2025.

⁸ Hereinafter “AICTE”

12. When the matter was listed on 1st April 2025, Shri Harish Pandey learned counsel appeared on behalf of the AICTE. It was submitted by the learned counsel that in compliance of all the provisions laid down in the Approval Process Handbook 2004, the AICTE had granted approval of Hotel Management and Catering programme/course to the Appellant's Institute in the Academic Year 2004. It was further submitted that since then the AICTE has granted *Extension of Approval* for this course to the Institute up-to the Academic Year 2024-25 on the basis of self-declaration.

13. The learned counsel for AICTE submitted that the Approval Process Handbook 2024-27⁹ lays down the provisions of infrastructure requirement for running a programme in the Institute. Relying on the provisions of *Chapter II of the AICTE-APH*, it was submitted by the learned counsel for the AICTE that the extant provisions provide that the land where the Institute is to be run shall be with clear title in the name of the trust/society/company or on a long-term lease for a minimum period of 30 years and that the live

⁹ Hereinafter "AICTE-APH"

lease should be at least equal to maximum duration of programme/course being run by the Institute. It was further submitted that till date the AICTE has not received any kind of proposal from the Appellant's Institute.

14. Having heard the learned Senior Counsel/counsel for the Appellant, Respondent No. 1 and the AICTE, it is clear that insofar as the *lis* between the parties is concerned, the same has been amicably settled through mediation.

15. The *only issue* that remains to be resolved is, as to, whether in light of the settlement agreement and the extant provisions of AICTE-APH a direction be issued to the AICTE?

16. The Appellant, having received requisite permission from AICTE and recognition from Mangalore University, has been running the Institute since the Academic Year 2004. Even for Academic Year 2024-25, the Appellant has received permission from AICTE. It, however, so happens that on account of non-renewal of the lease agreement by Respondent No. 1, the Appellant is now no longer able to run the Institute from the suit property.

17. No doubt that Shri Harish Pandey, learned counsel for the AICTE is right in saying that as per the provisions of

AICTE-APH, if the permission has to be continued, the Appellant will have to shift its institute to a premises which is either owned by it or a long-term lease for a minimum period of 30 years has to be executed. However, the present appeal arises out of peculiar facts and circumstances. The Appellant is having a valid permission from 2004 till date. Around 250 students are taking education therein. It is not the case that the Appellant is not having adequate infrastructure. However, on account of the peculiar circumstances, the Appellant will have to shift to the new location. The Appellant has already taken steps for shifting its Institute to a campus which conforms with the provisions of AICTE-APH. However, on account of the peculiar facts, the said campus would not be ready for a period of 2 years. Faced with the difficulty that on one hand the Appellant has to vacate the present premises and on the other hand, the campus where it is proposing to relocate its Institute, is not ready, the Appellant is required to shift its Institute at a temporary location.

18. We find that this is a fit case wherein this court should exercise its extraordinary jurisdiction under Article 142 of the Constitution of India to meet the ends of justice. If we fail to

exercise the said power, the career of about 250 students would be jeopardized. In that view of the matter, we are inclined to issue the following directions:

- (i) The AICTE and Mangalore University shall not insist, for a period of 2 years from today, on compliance with the requirement of the Appellant shifting its Institute to a place which is either owned by it or in respect of which the lease for a period of more than 30 years is existing;
- (ii) The AICTE and Mangalore University will continue the permission/affiliation granted to the Institute for a period of 2 years in a premises where the Appellant would temporarily relocate its Institute. However, the said premises would conform to the other requirements;
- (iii) The Appellant is directed to ensure that the campus/new location which conforms with the requirement of the AICTE would be complete within a period of 2 years from today and that it shifts its Institute to the said location prior to 30th April 2027;

- (iv) Insofar as the *lis* between the parties is concerned, the settlement agreement is taken on record and the statements made by the parties in the said settlement agreement are treated as an undertaking to this Court; and
- (v) The fee of the learned Mediator, with the consent of the counsels appearing for both the parties is fixed at Rs.10,00,000/- (Rupees Ten Lakh only) to be shared by the Appellant and Respondent No.1 in equal proportion and the Appellant is entitled to adjustment of the initial deposit of mediator's fee, made in excess of his obligation of 50%, towards *mesne profits* payable to Respondent No.1.

19. Before we part with the judgment and order, we place on record our deep gratitude for the efforts made by Hon'ble Shri Justice A.S. Bopanna as a result of which the parties could arrive at an amicable settlement.

20. We also place on record our deep appreciation for the assistance rendered by the learned Senior counsel/counsel for the parties for arriving at a settlement.

21. The appeals shall stand disposed of in the aforesaid terms.

.....**J.**
(B.R. GAVAI)

.....**J.**
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
APRIL 23, 2025.