



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF APRIL, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

WRIT PETITION NO. 11953 OF 2026 (GM-CPC)

BETWEEN:

MRS. SHARMILA
AGED ABOUT 51 YEARS
NO 499, SRI SAI GIRLS P G
10TH CROSS, SAMARTHA
CHIKKABANAVARA
HESARAGHATTA MAIN ROAD
BENGALURU - 560090

...PETITIONER

(BY SRI. MASKIKAR HRISHIKESH DIWAKAR., ADVOCATE)

AND:

1. MRS. ASHA THIPPESWAMY
W/O INDUDARA S E
AGED ABOUT 36 YEARS

2. MR INDUDARA S E
S/O MR ESHWARAIAH

R1 AND R2 ARE R/AT NO 19
2ND MAIN ROAD, VIDYANAGAR
T DASARAHALLI, BENGALURU -560057

...RESPONDENTS

(BY SRI. BHAT GANAPATHI NARAYANA., ADVOCATE
FOR R1 & R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE
IMPUGNED ORDER AT ANNEXURE-A DATED 06.04.2026 ALONG
WITH THE DETAILED ORDER PASSED BY THE LD. LXXXII
ADDL. CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL
COURT (CCH-83) BENGALURU IN COM O.S. NO. 1226/2025

Digitally signed by
DHANALAKSHMI
MURTHY
Location: HIGH
COURT OF
KARNATAKA



AND ALLOW IA NO. 3 TO 5 IN THE INTEREST OF JUSTICE AND EQUITY AND ETC.

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

CORAM: HON'BLE MR. JUSTICE H.T. NARENDRA PRASAD

ORAL ORDER

1. In this writ petition, the petitioner has called in question the order dated 06.04.2026 passed by LXXXII Additional City Civil and Sessions Judge, Commercial Court, Bangalore, on I.A.Nos.3 to 5 in Com.O.S.No.1226/2025, whereby, the said applications filed by the defendants have been dismissed.

2. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court in Original Suit.

3. The plaintiffs have filed a suit in Com.O.S.No.1226/2025 for eviction and damages. Upon service of summons, the defendant has appeared through counsel and filed written statement. On the basis of the



pleadings of the parties, Trial Court has framed issues. When the matter was set down for evidence, the defendant filed I.A.No.3 under Section 151 of CPC to recall the order dated 14.01.2026; I.A.No.4 under Section 151 of CPC to reopen the stage to file written statement and I.A.No.5 under Order XX Rule 19 (1) and (2) read with Section 151 of CPC for set-off an equitable sum of money. The Trial Court by impugned order dated 06.04.2026, dismissed the said applications. Aggrieved by the same, the petitioner-defendant is before this Court.

4. Learned counsel appearing for the petitioner-defendant contended that the petitioner has filed the applications seeking an equitable set-off and not for filing any additional written statement. It is submitted that in cases of equitable set-off, there is no bar under Order VIII Rule 6 of the Code of Civil Procedure, 1908. He further contended that equitable set-off is distinct from legal set-off and operates independent of the strict provisions of the Code. In support of his contention, he placed reliance on



the judgment of the Calcutta High Court in **Peerless General Finance & Investment Company Limited and others v. Jitendra Kumar Khan and others**, reported in **2004 SCC OnLine Cal 349**, which has been affirmed by the Hon'ble Supreme Court in **Jitendra Kumar Khan and others v. Peerless General Finance & Investment Company Limited and others** reported in **(2013) 8 SCC 769**.

5. Learned counsel appearing for the respondents-plaintiffs has contended that once the issues have been framed, the application for an equitable set-off or counter claim is not maintainable. To that effect, he has relied upon the judgment of the Apex Court in the case of **Ashok Kumar Kalra vs. Wing CDR. Surendra Agnihotri and others** reported in **(2020) 2 SCC 394**. He further submitted that the petitioner-defendant is not paying the admitted rent and the defendant on one pretext or the other is protracting the proceedings.



6. The contention of the petitioner–defendant is that she has filed the aforesaid applications seeking relief of equitable set-off and not legal set-off. It is submitted that the Trial Court, without examining this aspect of the matter, has rejected the applications solely on the ground that they are not maintainable in view of Order VIII Rule 6 of the CPC.

7. In the light of the facts and circumstances of the case and the legal position laid down by the Hon’ble Supreme Court in **Jitendra Kumar Khan and others v. Peerless General Finance & Investment Company Limited and others, (2013) 8 SCC 769**, it is evident that the question relating to maintainability of the applications seeking equitable set-off requires a fresh consideration by the Trial Court on merits. The impugned order having been passed without conducting a detailed examination on the nature of the claim, warrants interference.

8. Accordingly, the following order is passed:



ORDER

- a) Writ petition is allowed.
- b) The order dated 06.04.2026 passed by LXXXII Additional City Civil and Sessions Judge, Commercial Court, Bangalore, on I.A.Nos.3 to 5 in Com.O.S.No.1226/2025, is set aside.
- c) The Trial Court is directed to reconsider the said applications filed by the petitioner-defendant in accordance with law.
- d) All the contentions of the parties are kept open
- e) The petitioner-defendant is directed to deposit the arrears of admitted rents before the Trial Court on or before 01.06.2026. The same is subject to the result of the suit.

Sd/-
(H.T. NARENDRA PRASAD)
JUDGE