



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 23<sup>RD</sup> DAY OF JUNE, 2026**

**BEFORE**

**THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**WRIT PETITION NO. 18076 OF 2025 (GM-CPC)**

**BETWEEN:**

MR CHRISTINE SEQUEIRA  
W/O FRANCIS SEQUEIRA  
AGED ABOUT 75 YEARS,  
R/AT SAI RESIDENCY II,  
FLAT NO 201, BEHIND MORE,  
LADY HILL,  
MANGALURU- 575006 (DK)

...PETITIONER

(BY SRI. M SUDHAKAR PAI.,ADVOCATE)

**AND:**

THE CHURCH OF IMMACULATE  
CONCEPTION OF URWA,  
MANGALURU,  
A RELIGIOUS AND CHARITABLE  
INSTITUTION  
REPRESENTED BY ITS PARISH PRIEST  
AND ADMINISTRATOR  
REV FATHER STANY PEREIRA  
S/O LOUIS PEREIRA  
AGED ABOUT 57 YEARS  
R/T URWA CHURCH  
MANGALURU 575006 (DK)

...RESPONDENT

(BY SRI. CYRIL PRASAD PAIS.,ADVOCATE)



THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DTD 13.06.2025 ON IA NO. III IN RA NO. 23/2020 ON THE FILE OF THE PRESIDING OFFICER LABOUR COURT MANGALURU (NOW TRANSFERRED FROM II ADDL DIST JUDGE MANGALURU) VIDE ANNEX-G.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 05.06.2026, COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

**CAV ORDER**

Aggrieved by the order passed in I.A.No.III in R.A.No.23/2020 dated 13.06.2025 on the file of the Presiding Officer, Labour Court, Mangaluru [Now transferred from II Additional District Judge, Mangaluru], the petitioner is before this Court.

2. The facts of the case are that the respondent herein had filed O.S.No.143/2004 seeking possession. The petitioner herein had filed O.S.No.96/2009 for specific performance. On 03.12.2015, O.S.No.96/2009 filed by the petitioner was dismissed. Against that, the petitioner had filed R.A.No.7/2016. Thereafter, O.S.No.143/2004 filed by the respondent was also



dismissed by judgment and decree dated 04.05.2020. Against that, the respondent had filed R.A.No.23/2020. The appeal filed by the petitioner i.e., R.A.No.7/2016 was allowed and it has become final. Thereafter, the petitioner has filed Ex.Case.No.65/2025 to execute the decree in R.A.No.7/2016. Then the petitioner has filed I.A.No.III in R.A.No.23/2020 seeking stay till disposal of Ex.Case No.65/2025. The First Appellate Court by order impugned had dismissed I.A.No.III.

3. While dismissing the application, the Appellate Court had observed that the relief of possession as well as the relief of specific performance is separate and distinct and there is no application under Section 10 of CPC to stay either of the suit and they have to proceed independently. Apart from that, it appears that the petitioner herein is not interested in getting the Sale Deed executed as per the decree passed in her favour. So she is not interested to proceed with this appeal despite submission of arguments on main appeal by the counsel for the respondent. Therefore, looking at the facts and circumstances of the case, the decisions relied upon by the petitioner are not applicable. On the other hand, the decisions relied upon by the



respondent are aptly applicable to the case on hand. Accordingly, the Appellate Court had dismissed I.A.No.III with cost of Rs.500/- payable to the respondent herein.

4. Learned counsel appearing for the petitioner submits that R.A.No.7/2016 filed by the petitioner was allowed by setting aside the Judgment and Decree in O.S.No.96/2009. Thereafter, the execution petition is filed. Once the Sale Deed is executed, the appeal itself becomes infructuous. Both the suits are filed in respect of the same schedule property and the Appellate Court without appreciating all these facts had dismissed the application. It is submitted that in the interest of justice, R.A.No.23/2020 has to be stayed till the execution proceedings are concluded and the Appellate Court had failed to consider all these aspects.

5. Learned counsel appearing for the respondent submits that the Appellate Court had rightly dismissed the application. It is submitted that just because the execution case is pending that cannot be a ground for the Court to stall the proceedings. He has relied on the judgment of the Co-ordinate Bench of this Court in case of ***K.M.Khalendar Since Dead By Lrs. Vs.***



**Sri.K.M.S. Imtiyaz Saleem and Others** arising out of  
**WP.No.14852/2016 dated 15.09.2022.** Paragraph No.12  
reads as follows:

***"12. In view of the Judgment of the Hon'ble Supreme Court in National Institute of Mental Health And Neuro Sciences's case (referred supra), the law laid down by the coordinate Bench of this Court in Deen Perfumery Company's case (referred supra) is not the correct position of law as in that judgment, it was assumed that if a suit for specific performance fails, then the trial of the ejectment suit can be restored. Hence, the judgment of the coordinate Bench of this Court in Deen Perfumery Company's case (referred supra) is per incuriam and does not propound the correct position of law. Likewise, in L.C. Prakash's case relied upon by the learned counsel for the petitioner, there were two suits between the parties. The first suit, O.S. No.343/2013 was for declaration and for perpetual injunction while defendant in the said suit filed a suit in O.S. No.176/2015 for perpetual injunction and therefore, this Court held that the issue in both the suits were similar and the trial in the subsequent suit was rightly stayed. The judgment of the coordinate Bench of this Court in L.C. Prakash's case (referred supra) is clearly distinguishable on facts and is not applicable to the case on hand. In the present case, the suit for ejectment could proceed independently and suit for specific performance could also be decided independently and Section 10 of the CPC, is clearly not applicable as reliefs in both the suits are separate and distinct. In that view of the matter, the impugned Order passed by the Small Causes Court cannot be faulted."***

6. Learned counsel had relied on another judgment of the  
Co-ordinate Bench of this Court in case of **N.B.Maben Since  
Deceased By Lrs. Vs. Rajashree B Nayak** arising out of



**HRRP.No.70/2017 dated 08.02.2024.** Paragraph No.23 of the order reads thus:

***"23. Sections 105 to 107 of TP Act govern the law of lease. There must be express surrender of the tenancy right by the lessee to the lessor and the possession must be by virtue of agreement to sell, but this is absent in the agreement for sale in the present case. Therefore, these facts, circumstances and evidence revealed that the petitioner is not entitled for benefit of Section 53A of TP Act. The remedy of taking benefit of Section 53A of the TP Act lies to the petitioner in the suit filed for specific performance of contract and in the appeal filed against the decree, but not in the present proceedings of eviction initiated under the Rent Act. What is paramount thing considered in the present case is whether there is a jural relationship of tenant and owner between the parties. In case the petitioner succeeds in the appeal in getting confirmation of the decree passed in specific performance of contract even if the petitioner is ousted of possession, he is entitled to benefit of decree of specific performance of contract. Therefore, the rights in this regard of the parties in both proceedings are different. Before the first revisional court the plea of Section 53A is not taken and for the first time submission is canvassed before this Court in this second revisional petition. However, this Court has considered the submission canvassed by the learned counsel for the petitioner regarding doctrine of part performance and held that the petitioner is not entitled to take benefit under Section 53A of the TP Act for the reasons recorded above. Accordingly, I answer Points No.1 and 2 in the negative."***

7. Relying on these judgments, learned counsel for the respondent submits that the Appellate Court had rightly dismissed the application and in spite of a decree that is passed in a suit for specific performance, the suit filed by the respondent seeking possession can still be continued.



8. Having heard the learned counsels on either side, perused the entire material on record. The suit filed by the petitioner seeking specific performance is decreed. Initially, the said suit and the suit filed by the respondent seeking possession were also dismissed. Against that, appeals were filed by both parties. Then the appeal filed by the petitioner was allowed, whereas the suit filed by the respondent seeking possession is still pending. According to the petitioner, till the execution proceedings are concluded, the suit filed by the respondent seeking possession has to be stayed. The Appellate Court had rejected the said contention.

9. This Court has perused the judgments that are relied on by the learned counsel for the respondent. The present application is filed under Section 151 of CPC. The underlying object of Section 10 of CPC is to prevent the Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of the same matter in issue. If the two parallel Courts proceed to decide the matter, there will be every scope of rendering conflicting judgments. The Apex Court in ***National Institute of Medical Health and Neuro Sciences Vs. C.***



***Parameshwara***<sup>1</sup> had observed 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. Here, the suit for possession and suit for specific performance of the agreement are two different and distinct reliefs and they can be decided independently by the Court. The power under Section 151 of the Code of Civil Procedure is intended to secure the ends of justice and to prevent abuse of process of the Court. However, such power cannot be exercised merely because another proceeding concerning the same property is pending. The suit for possession is an independent suit. The applicant must establish that continuation of the suit would result in prejudice, unnecessary duplication of adjudication or an abuse of process of the Court. The petitioner could not make out any of the grounds. In those circumstances, the suit need not be stayed. The Appellate Court had rightly dismissed the application and this Court finds no reasons to interfere. Hence, this Court is passing the following order:

---

<sup>1</sup> AIR 2005 SC 242



**ORDER**

- i. Accordingly, the writ petition is ***dismissed***.
- ii. All I.As. in this petition shall stand closed.

**SD/-  
(LALITHA KANNEGANTI)  
JUDGE**

MEG  
List No.: 1 Sl No.: 2