CNR: KAHC010094842024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

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BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 6168 OF 2024 (GM-CPC)

BETWEEN:

M/S. M.A.TRADERS
REPRESENTED BY ITS PROPRIETOR,
MR.MOHAMMED ABDUL RAZAK @ MOHAMMED ATTAR
AGED ABOUT 48 YEARS,
S/O MOHAMMED AFZAL HUSSAIN ATTAR,
M.A.TRADERS,
AT 7-1-97/19/7-838, S.G.GUNJ,
APMC YARD, KOPPAL-583 231.

...PETITIONER

(BY SRI. MOHD USMAN SHAIKH., ADVOCATE)

AND:

Digitally signed by SUMATHY KANNAN
Location: HIGH COURT OF KARNATAKA

MR. PRADEEP KUMAR
S/O AMARAPPA GADDI,
AGED ABOUT 29 YEARS,
R/A NO.1222, 2ND 'C' MAIN,
HOSAKEREHALLI,
BANASHANKARI III STAGE,
NEAR VITTAL EYE HOSPITAL,
BENGALURU-560 085.

...RESPONDENT

(BY SRI. A.ABHINAV RAMANAND., ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE IMPUGNED ORDER PRODUCED AS ANNEXURE-A PASSED ON 19/01/2024, IN COM.O.S.1201/2022 BY THE HONBLE LXXXVI ACC AND SJ, BENGALURU, ON THE APPLICATION FIELD UNDER ORDER XVIII RULE 4(1B) R/WITH SECTION 151 OF THE CODE OF CIVIL

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PROCEDURE SEEKING PERMISSION TO PRODUCE ADDITIONAL DOCUMENTS AND TO EXAMINE WITNESSES AND TO ALLOW THE APPLICATION.

THIS PETITION IS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MS. JUSTICE TARA VITASTA GANJU**

ORAL ORDER

1. The present petition seeks to challenge an order dated 19.01.2024 passed by the LXXXVI ACC and Sessions Judge, Bengaluru in O.S.No.1201/2022 (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, an application under Order 18 Rule 4(1B) of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') has been dismissed.

2. While dismissing the application, the learned Trial Court has held that the entertainment of this application would prejudice the respondent/plaintiff and would be in effect filling up a lacuna in the evidence.

3. The brief relevant facts of the case are that, a suit in Com.O.S.No.1201/2022 was filed for recovery of monies

under the Commercial Courts Act, 2015 (hereinafter referred to as the 'CC Act') by the respondent/plaintiff seeking to direct the petitioner/defendant pay them the principal sum of Rs.53,25,000/- and Rs.9,00,728/- towards interest, totaling to Rs.62,25,728/- along with *pendente lite* interest and future interest.

4. The suit was contested by the petitioner/defendant and a defence was set up that the amount of Rs.53,25,000/- was not repaid since there were separate transactions with the brother-in-law of the respondent/plaintiff, Mr. Veerabasappa Balloli. In addition, it was stated therein that since the said Mr. Veerabasappa Balloli had passed away on 28.09.2021, the respondent/plaintiff is taking advantage of the services already rendered by the petitioner/defendant to the family of the respondent/plaintiff.

5. It is not disputed that since this is a commercial suit, under Order 15A of the CPC, timelines and case

management schedules were fixed and the matter proceeded in accordance therewith. It is also not in dispute that during the cross-examination of the petitioner/defendant, he was confronted with certain invoices and it is thereafter that the said application has been filed.

6. The learned counsel for the petitioner/defendant has submitted that the Impugned Order suffers from an infirmity. The learned Commercial Court has found that it was a clear typographical mistake which was committed on the invoice and the petitioner/defendant is merely seeking to produce the correct documents in relation to the typographical errors. Learned counsel further submits that the petitioner/defendant has been diligent in making the application and has made this application within a few days of his cross-examination. Lastly, it is contended that the rule provides for sufficient cause being shown. The petitioner/defendant has shown sufficient cause as has

been stated in his application. Thus, the learned Commercial Court ought to have allowed this application. In support of his case, the learned counsel for the petitioner/defendant seeks to rely upon a judgment of a Co-ordinate Bench of this Court in the case of ***M/s. JSM Corporation Private Limited vs. M/s. Brunton Developers and another***[1].

7. Learned counsel for the respondent/plaintiff on the other hand so far as concerns the application, contends that the learned Commercial Court has correctly held that the petitioner/defendant wants to cover up an admission. He seeks to rely upon the cross-examination, which he is placing on record along with a memo today, to submit that it is only after an admission was exculpated during the cross-examination from the witness of the petitioner/ defendant (DW1), that the application has been filed. Learned counsel further submits that the documents that were marked previously as Exhibits D1 to D12 were within

[1] 2025 SCC OnLine Kar 1215

the knowledge of the petitioner/defendant right from the beginning of the case and there is nothing new that was sought to be produced. Relying on the judgment of a Co-ordinate Bench of this Court in ***Krishna Bhagya Jala Nigam Ltd. and others vs. A. Prabhakara Reddy and another***[2]**,** learned counsel contends that the Commercial Courts Act has a specific procedure with timelines laid out for case management etc. at an initial stage. While examining Order 18 Rule 4(1B) of the CPC, the Co-ordinate Bench has held that the Commercial Court cannot permit a party to lead fresh evidence in the light of this provision.

7.1. Lastly, it is contended that the power of examination of this Court under Article 227 of the Constitution of India is limited in its jurisdiction and this Court in the judgment of **Kanpur Flowercycling Private Limited Vs. M/s.**

[2] 2023 KHC 7285

Sarathi International Inc.[3] while examining the issue of frequent recourse to Article 227 of the Constitution of India in commercial disputes, has held that the interference should be restricted to cases where there is manifest injustice or errors incapable of correction at a later stage or patent perversity or jurisdictional failure. It has also been held that the purpose of the Commercial Courts Act would be defeated if every order of the Commercial Court is challenged under Article 227 of the Constitution.

8. It is apposite at this stage to examine the provisions of Order XVIII Rule 4(1B) of the CPC, which is extracted below:

> ***"Order XVIII. HEARING OF THE SUIT AND EXAMINATION OF WITNESSES***
>
> ***4. Recording of evidence.—****(1) In every case, the examination-in-chief of a witness shall be on affidavit and copies thereof shall be supplied to the opposite party by the party who calls him for evidence:*

[3] 2026 SCC OnLine Kar 6536

Provided that where documents are filed and the parties rely upon the documents, the proof and admissibility of such documents which are filed alongwith affidavit shall be subject to the orders of the Court.

(1-A) xxx xxx xxx

(1-B) A party shall not lead additional evidence by the affidavit of any witness (including of a witness who has already filed an affidavit) unless sufficient cause is made out in an application for that purpose and an order, giving reasons, permitting such additional affidavit is passed by the Court."

(1-C) xxx xxx xxx

[Emphasis Supplied]

8.1 A plain reading of this provision sets out that the party shall not lead additional evidence unless sufficient cause is shown in the application and an order is passed giving reasons therefor.

9. This Court has examined the records. The application that was filed by the petitioner/defendant sets out that the petitioner/defendant be permitted to examine two persons to establish the fact that they gave the vehicle bearing Registration No.KA-20-D-9239 for hire, to meet the ends of justice. The affidavit sets out that the reason for this fresh evidence is that in the invoice, the vehicle number

was wrongly typed. The relevant extract of the application and the affidavit are extracted below:

> *"APPLICATION UNDER ORDER XVIII RULE 4(1B) READ WITH SECTION 151 OF THE CODE OF CIVIL PROCEDURE:*
>
> *Defendant humbly submits as follows:*
>
> *That for the reasons solemnly affirmed to in the accompanying affidavit defendant most respectfully pray that this* ***Hon'ble court may be pleased permit the defendant to examine, Mr. Chand Pasha s/o Shaikavalli*** *Mulla Mr. Hussain Mulla S/o Shaikavalli Mulla resident of no 4-1-47-2, 10th ward Kanakagiri Oni VTC Koppal 583231,* ***to establish the fact of that he gave the vehicle KA-20-D-9239 for hire to on the relevant time, to meet the ends of justice."***
>
> ***"AFFIDAVIT***
>
> *xxx xxx xxx*
>
> *3) I affirm and state that in fact the vehicle shown in Ex D-2 is KA-20-D-9239,* ***one Mr. Chand Pasha, given it for hire but in invoice registered number of the vehicle is wrongly typed as KA 9329, to substantiate the said fact it*** *is necessary on my part to produce the Registration Certificate of the KA-20-D-9239, and also to examine the concerned person,* ***preferably registered owner and the person who was managing the vehicle.***
>
> *4) I affirm and state that Plaintiff subsequent to the filing of the plaint,* ***leading evidence and by way cross examination has set up new defense and highlighted a clerical mistake to contend that invoice produced as Exhibit- is false document and wrong vehicle number is*** *shown. it is to be noted that he did not file rejoinder or the replication and all of a sudden took the defendant by surprise.*

> *5) I affirm and state that only on cross examination by the Plaintiff's. counsel I realised that clerical mistake is crept up in the invoice.* ***Since Plaintiff intend to make wrongful use of the clerical mistake to canvas before the court that I created false document, as such it has become necessary on my part to produce the documents*** *shown in the application and clarify the said mistake. I state that under law an oversight or typographical error or misunderstanding is required to be properly explained or else it will become the basis for a judicial decision and consequently justice will fail, therefore it is necessary to examine the witnesses."*
>
> [Emphasis Supplied]

10. In its Statement of Objections filed to this application, the respondent/plaintiff has stated that the provision does not provide for leading of fresh evidence through a new witness to correct errors in the documents. It is further stated that it is not available for overcoming admissions in the evidence. The petitioner/defendant has seen and examined all documents while preparing written statement and at this stage, this story has been concocted to overcome the admissions made in the cross-examination. Emphasis has also been laid on the fact that the petitioner/defendant has filed this application only to overcome admissions. In this regard, it is relevant to

extract paragraphs 4, 5 and 6 of the Objections which are set out below:

> *"4. The present application under Order XVIII Rule 4(1B) R/w 151 of Code of Civil Procedure, 1908.* ***The said provision does not provide for leading of fresh evidence through a new witness to correct the alleged error in the documents that is produced by the Defendants which are marked as Exhibits or to overcome admissions in the evidence.*** *The said Exhibit, Ex.D-2, Invoice No.MA/2021-22/0241 dated 06.09.2021 was produced by the Defendant along with the Written Statement itself.* ***The Defendant has taken a stand that he came to know*** *of the alleged mistake in the marked Exhibit only when he was cross-examined.* ***The Defendant has seen and examined the said document while preparing his Written Statement,*** *signing the Written Statement, producing the documents, cross-examining the Plaintiff and leading his chief examination.* ***As such, it is beyond one's imagination to say that the Defendant learnt about the said alleged mistake only on cross-examination.*** *The Defendant has created a cock and bull story to overcome the admissions in the evidence which are gatak for his defense. Therefore, the Defendant has sworn to the false affidavit and hence the application is liable to be rejected.*
>
> *5. In the present case, the proprietor of the Defendant has adduced the evidence as DW1.* ***DW1 has produced several invoices which are marked as Ex.D1-D12. During the course of his cross-examination, DW1 has*** *categorically admitted that he had verified all the invoices which are produced as D1 to D12 and it is only after such due verification, the said invoices were produced and exhibited before this Court. DW1 in his cross-examination has categorically admitted* ***that "the vehicle mentioned in Ex.D.2 bearing registration No.KA20-A-7753 belongs to somebody else and not myself". DW1*** *during his cross-examination was also confronted with two 'B' Extracts of vehicle number KA20-D-9329 and KA20-D-7753 which were admitted by DW1 and which are marked as 'P4' and 'P5' respectively. This*

aspect has also been admitted by Defendant in the Affidavit accompanying the present application. ***It is clear that DW1 during cross-examination has categorically admitted that the vehicle number reflected in EX-D2 ie., Invoice No.MA/2021-22/0241 dated 06.09.2021 is correct. Therefore, the Defendant in order to overcome the admissions among other admissions made during the*** *cross-examination has filed the present application. It is a well-settled law any applications filed to overcome the admissions made during the cross-examination cannot be entertained and the same has to be dismissed.*

6. It is submitted that the document which the Defendant is contending to produce before this Hon'ble Court to correct the alleged error in the Ex.D-2 i.e., Invoice No.MA/2021-22/0241 dated 06.09.2021. ***The said Exhibit was produced by the Defendant along with the Written Statement itself. The Defendant alleges that he came to know of the alleged mistake in the Exhibit only when he was cross-examined.*** *The Defendant has seen and examined the said document while preparing his Written Statement, signing the Written Statement, producing the documents, cross-examining the Plaintiff and leading his chief examination.* ***As such, it is beyond one's imagination to say that the Defendant learnt about the said alleged mistake only on cross-examination.*** *Therefore, the Defendant has sworn to the false affidavit and hence the application is liable to be rejected."*

[Emphasis Supplied]

12. This Court has also examined the cross-examination which has been produced by the respondent/plaintiff today. The cross-examination reflects that the witness in the first instance states that the vehicle number mentioned in invoices (Exhibit D1 to D12) are the correct

invoices. Thereafter when confronted with Exhibits P4 and P5, he states that these were not lorries but in fact passenger autorickshaws and when the witness was questioned further, he has replied that the vehicle mentioned in Exhibit D2 is a lorry. In addition, the witness for the respondent has also confirmed that the registration number mentioned as KA-20 pertained to Udupi District. The relevant extract of his deposition, is set out below:

> *"**The invoices Ex.D.1 to Ex.D.12 are the invoices for invoices issued by me for sale of eggs. The vehicle number mentioned in the invoices are vehicle hired by us for the parties to transfer the consignment. It is true that in none of these invoices there is no reference about particular time at which said invoice were raised."***
>
> *xxx* *xxx* *xxx*
>
> ***"It is not true to suggest that the 2 vehicle mentioned in Ex.D2 are passenger auto rickshaw.** It is true that the document now shown to me is pertaining to KA20-D-9329 mentioned in Ex.D.2, said B extract is now marked as **Ex.P.4**. It is true that the document now shown to me is pertaining to KA20-D-7753 mentioned in Ex.D.2, said B extract is now marked as **Ex.P.5. It is true that in Ex.D2 the vehicle is shown as lorry where as in Ex.P4 and P5 it is mentioned as 3 wheeler. Question: The nature of the vehicle mentioned in Ex.D2 is incorrect?***
>
> ***Answer: According to me it is a lorry.***
>
> ***It is true that the registration number mentioned as KA20 pertains to Udupi district and Koppal***

District registration number is KA37 and Hospet KA35."

[Emphasis Supplied]

13. This Court has in the judgment of ***Kanpur Flowercycling*** case, while examining the interplay between the Commercial Courts Act and Article 227 of the Constitution of India, has held as follows:

> ***"20. Clearly the intention of the legislature was not to have an all-pervasive access to the challenges made to the CC Act.*** *Thus, the question that would arise is whether parties should be able to circumvent these statutory provisions by making frequent recourse to Article 227 of the Constitution, to challenges under the CC Act.*
>
> *21. An examination of the law as set out hereinabove reflects that:*
>
> *(i) It is important for the Courts to ensure that the power under* ***Article 227 be exercised to ensure compliance with the objectives of the enactment of the CC Act remains intact.***
>
> *(ii) The powers of superintendence under Article 227 are circumscribed and supervisory jurisdiction is to be exercised sparingly and cannot be used to substitute the judgment of a Subordinate Court or Tribunal to correct trivial errors.*
>
> ***(iii) Article 227 of the Constitution should be used for*** *jurisdictional errors causing grave injustice. The power should be exercised where a party is left remediless.*
>
> *(iv) What has been barred by Section 115 of the CPC through Section 8 of the Commercial Courts Act, cannot be subsequently revived by use of powers under Article 227 of the Constitution.*

(v) Decrees and judgments are amenable to challenge within the period of limitation as is prescribed under Section 13 of the CC Act.

(vi) Interlocutory Orders passed which are amenable to challenge under Order 43 of the CPC and Section 37 of the CC Act, may be challenged by way of an appeal under Section 13 of the CC Act as well.

(vii) Interference in petitions arising from Commercial Courts is limited to only instances where non-correction under Article 227 will lead to manifest injustice. Some circumstances would be when errors (a) are incapable of correction at a later stage, and (b) give rise to the level of patent perversity or jurisdictional failure.

22. To facilitate the objective of the Commercial Courts Act, that is, speedier disposal of commercial matters, it is suggested that a separation of matters under Article 227 of the Constitution be undertaken for petitions arising from commercial cases. This could include the creation of a separate roster to further implement the objectives of the Act or by creation of a system for procedural constraints including an examination as to whether interference is requisite for fewer and shorter adjournments and timelines for disposal."

[Emphasis Supplied]

14. The learned counsel for the petitioner/defendant has relied on a judgment of the Coordinate Bench in ***M/s. JSM Corporation*** case. However, as correctly pointed out by learned counsel for respondent, this judgment does not in fact pertain to Order 18 Rule 4 CPC, but to Order 11 Rule 1 CPC and hence is not applicable to the facts of the case.

15. The Supreme Court in the case of ***K.K. Velusamy vs. N. Palanisamy***[4] while examining Order 18 Rule 17 of the CPC has held that the power to recall a witness must be used sparingly and that power must not be used to fill in lacunas in the evidence.

> **"***9. Order 18 Rule 17 of the Code enables the court, at any stage of a suit, to recall any witness who has been examined (subject to the law of evidence for the time being in force) and put such questions to him as it thinks fit.* ***The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any doubts it may have in regard to the evidence led by the parties. The said power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined.*** *(Vide Vadiraj Naggappa Vernekar v. Sharadchandra Prabhakar Gogate [(2009) 4 SCC 410 : (2009) 2 SCC (Civ) 198] .)*
>
> *xxx xxx xxx*
>
> ***11. There is no specific provision in the Code enabling the parties to reopen the evidence for the purpose of further examination-in-chief or cross-examination. Section 151 of the Code provides that nothing in the Code shall be deemed to limit or otherwise affect the inherent powers of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of the court. In the absence of any provision providing for reopening of evidence or recall of any witness for further examination or***

[4] (2011) 11 SCC 275

cross-examination, for purposes other than securing clarification required by the court, the inherent power under Section 151 of the Code, subject to its limitations, can be invoked in appropriate cases to reopen the evidence and/or recall witnesses for further examination. This inherent power of the court is not affected by the express power conferred upon the court under Order 18 Rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications.

xxx xxx xxx

13. The Code earlier had a specific provision in Order 18 Rule 17-A for production of evidence not previously known or the evidence which could not be produced despite due diligence. It enabled the court to permit a party to produce any evidence even at a late stage, after the conclusion of his evidence if he satisfied the court that even after the exercise of due diligence, the evidence was not within his knowledge and could not be produced by him when he was leading the evidence. That provision was deleted with effect from 1-7-2002. The deletion of the said provision does not mean that no evidence can be received at all, after a party closes his evidence. ***It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence."***

[Emphasis Supplied]

16. The Co-ordinate Bench in the case of ***Krishna Bhagya Jala Nigam,*** while analyzing the Commercial Courts Act and the amendments made to the CPC after the

Commercial Courts Act came into force, has in addition to examining these additional provisions, examined the provisions of Order XVIII Rule 4(1B) of CPC and held that a Commercial Court cannot permit a party to lead fresh evidence when such witness is not named and the affidavit has not been filed Under Order 15A of the CPC except if sufficient ground are made out thus:

> *"10.7. In terms of Rule (2) of Order 15A of the CPC dealing with Case Management Hearing, the concerned Court shall make order approving the list of witnesses to be examined by the party, fix the dates on which the evidence of the witnesses of the parties is to be recorded, etc.*
>
> *xxx xxx xxx*
>
> ***10.9. The date on which the cross-examination is to be conducted being required to be fixed in terms of clause (d) of Rule (2) of Order 15A,*** *the date on which the evidence would be recorded is also fixed, so that as far as possible, the evidence of all witnesses are recorded, both in terms of chief examination and cross-examination on the same date.* ***This again being with intention to provide prior notice so as to enable all the parties and counsels to be ready on that date and not seek any unnecessary adjournment. Thus, in terms of Sub-rule (1-A) of Rule (4) of Order 18 read in conjunction with Order 15A relating to Case Management Hearing, the date on which the affidavit of evidence is required to be filed would be for the evidence of all the witnesses that a party proposes to examine in a particular matter simultaneously.***

10.10. Sub-rule (1-B) of Rule (4) of Order 18 imposes a restriction or a prohibition that a party shall not lead additional evidence by way of affidavit of any witness including a witness who has already filed an affidavit unless sufficient cause is made out in an application filed for such purpose.

10.11. The prohibition though not absolute, ***an exception to the prohibition can be made out only if sufficient cause is made out in the application filed for that purpose.***

10.12. Thus I answer point no.1 by holding that ***a Commercial Court cannot in light of Order 18 Rule 4(1A) permit a party to lead fresh evidence after the matter is posted for arguments when the witness has not been named in the list of witnesses and the affidavit has not been filed as per the Calender of dates fixed under Order 15A of the Code of Civil Procedure as amended by the Commercial Court Act, 2015, except if sufficient grounds is made out for the same.*** *Unless exceptional grounds are made out for allowing further evidence or examination of further witness in terms of Subrule (1B) of Rule (4) of Order 18 of CPC, the Commercial court cannot permit a person who is not named in the list of witnesses and whose affidavit has not been filed in the time stipulated under Order 15A of CPC cannot be permitted to lead his evidence by filing his affidavit."*

[Emphasis Supplied]

17. As stated above, Order XVIII Rule 4(1B) of the CPC does not provide for new evidence to be led at this stage. Once the Case Management Hearing under Order XV-A of

the CPC has been completed, to permit a party to lead additional evidence would also be contrary not only to the rule but also to the provisions of the Commercial Courts Act, unless exceptional grounds are made out. An examination of the application which has been filed also reflects that the grounds that were taken in this application are merely that the vehicle number has been typed wrongly. This cannot be considered as an exceptional ground under any circumstances.

18. For the reasons as stated above, this Court finds no ground to interfere with the Impugned Order in exercise of its powers under Article 227 of the Constitution of India. The petition is accordingly ***dismissed***. All pending applications stand closed.

Digitally signed by
TARA VITASTA GANJU
Location: HIGH COURT
OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

KS
List No.: 1 Sl No.: 44