CNR: KAHC010113482024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 5546 OF 2024 (GM-CPC)

BETWEEN:

SRI. JOSEPH STANLEY
S/O LATE VINCENT,
AGED ABOUT 53 YEARS,
RESIDING AT NO-20,
GROUND FLOOR, MARUTHI ENCLAVE,
HORAMAVU AGARA,
BENGALURU – 560 043.

...PETITIONER

(BY SRI. CUCKOO DELHI, ADVOCATE)

AND:

1. MISS FARHEEN AYESHA
   D/O LATE MOHAMMAD SALEEM
   AGED ABOUT 26 YEARS,

2. MISS KUBRA MARIAM
   S/O LATE MOHAMMAD SALEEM,
   AGED ABOUT 20 YEARS,

3. MASTER K.MOHAMMED AYAAN
   S/O LATE MOHAMMAD SALEEM,
   AGED ABOUT 13 YEARS,

   PETITIONER NO.3, SINCE MINOR
   REPRESENTED BY HIS ELDER SISTER,
   RESPONDENT NO-1.

   ALL ARE RESIDING AT NO 40,
   1ST CROSS, ANJINAPPA 2ND PHASE,

Digitally signed by
JAI JYOTHI J
Location: HIGH
COURT OF
KARNATAKA

SANGAM ENCLAVE
EXTENSION KOTHANUR,
BENGALURU – 560 077.

…RESPONDENTS

(BY SRI. SHIRALLI DILDAR JAINUSAB., ADVOCATE)

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THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ANNEXURE-E ORDER DATED 12.2.2024 ON I.A. NO.4, IN S.C.NO.15134/2022 BEFORE THE XIV ADDL. JUDGE COURT OF SMALL CAUSES (SCCH-19) MAYO HALL UNIT AT BANGALORE AND ALLOW THE IA NO. 4 FILED BY THE PETITIONER AND CALL FOR RECORDS IN S.C.NO.15134/2022 BEFORE THE XV ADDL. JUDGE COURT OF SMALL CAUSES (SCCH-19) MAYO HALL UNIT AT BANGALORE.

THIS WRIT PETITION, COMING ON FOR ORDERS, 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 12.02.2024 passed by the learned XV Additional Small Cause Judge & XXIII ACMM, Bengaluru on an application [I.A.No.4] in S.C.No.15134/2022 [hereinafter referred to as the Impugned Order"]. By the Impugned Order, an application filed by the petitioner/defendant under Order VI Rule 17 read with Section 151 of the Code

of Civil Procedure, 1908 [hereinafter referred to as the "CPC"] has been dismissed.

2. Although the present petition is posted for Orders, given the pendency of the matter and with the consent of the parties, it is taken up for hearing and disposal.

3. The challenge has been made by the petitioner/ defendant in the suit.

4. The learned counsel for the petitioner/defendant has contended that he had raised grounds in his application and had set out the reasons for filing his application. He submits that the cross-examination had just been concluded and that because the Agreement had been misplaced that he could not file the application earlier. Reliance in this behalf is placed on paragraph 3 of the affidavit filed in support of I.A.No.4.

5. The learned counsel for the respondents/plaintiffs, on the other hand, contends that no grounds have been made out in terms of Proviso to Order VI Rule 17 of the CPC. He

submits that the affidavit filed along with the application does not justify the test of due diligence.

6. Briefly, a suit for ejectment, recovery of possession and recovery of arrears of rent was filed by the respondents/plaintiffs on 25.07.2022. The petitioner/ defendant filed the Written Statement under Order VIII Rule 1 of the CPC on 19.10.2022. Subsequently, an application under Order VI Rule 17 of the CPC was filed by the petitioner/defendant on 14.07.2023, seeking to amend his Written Statement. The application [I.A.No.4] was opposed by the respondents/plaintiffs, by filing objections, *inter alia* on the ground that since the application [I.A.No.4] was filed after the commencement of the trial, in accordance with the Proviso to Order VI Rule 17 of the CPC, due diligence was not shown. In addition, it was stated in the Objections Statement that the application was filed belatedly only with a view to overcome the admissions made in the cross.

7. The learned Trial Court examined the application filed and gave its finding relying on the judgments of the Supreme Court that the application filed belatedly, could not be entertained, in view of the Proviso to Order VI Rule 17 of the CPC. In addition, it was held that when the petitioner/defendant filed the Written Statement, he had the knowledge of the Agreement, but the application was filed after the cross-examination of PW-1.

8. The relevant extract of the order of the learned Trial Court is set out below:

> *"14. This amendment application is filed when the Pw.1 denied alleged agreement in the cross examination, hence in view of issues raised and evidence led by the Plaintiff* ***this application was filed at belated stage. When the defendant filed Written statement he was having knowledge about alleged agreement, but this application is filed only to fill up the lacuna after the cross*** *examination of Pw.1. In this regard the Hon'ble Apex court elaborately discussed in the case reported in (2006) 12 SCC-1. Wherein it is held that,*
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> > *"The issue of belated attempt to amend the written statement, in the context issues raised and evidence lead by affidavit came up for consideration before Apex Court in (2006) 12 SCC 1 and the Apex Court held that in the absence of supporting reason for delay, the proviso to Order 6 Rule 17 is attracted and hence the proposed amendment was disallowed. Apex Court held that the word "shall" appearing in Order 6 Rule 17*

could be read as "may". The phrase or the words "commencement of trial" shall mean when the issues are settled and case is set down for recording evidence. It is held that non seeking of amendment as appropriate stage in the manner envisaged by law has disentitled the appellant."

xxx xxx xxx

*24. **An application Under Order 6 Rule 17 CPC must not be allowed only to fill up the lacuna of the parties or to the disadvantage or unfair advantage to the party.** The amendment must not be allowed for retrial or to change the nature of the case against either of the parties. Hence the proposed amendment sought by the defendant it goes to the root cause of the case."*

[Emphasis Supplied]

9. It is also apposite, at this stage, to extract the relevant paragraph setting out due diligence in the matter. Paragraph 3 of the affidavit filed in support of the application [I.A.No.4] is set out below:

*"3. I submit that, **the lease agreement dated 10-08-2020 was misplaced and that I had not furnished copy of the same to my advocate and that I traced the same recently. As such my advocate was unable to plead the same in written statement.** Is purchaser of the suit schedule property and defendants 2 to 6 are the subsequent purchasers of the suit schedule property of above."*

[Emphasis Supplied]

It is no longer *res integra* that proviso to Order VI Rule 17 of the CPC is not a directory provision but is a mandatory one. In order to ensure that the pleadings are not amended at any stage, the amendment as was inserted in the CPC in the year 2002. Where the amendment sought is at the post-trial stage, due diligence ought to have been shown by the petitioner/defendant.

10. An examination of the record reflects that the only ground taken was that the agreement was misplaced and now it has been found. No actual explanation has been set out for not bringing this amendment on record, earlier. It is an undisputed case of the petitioner/defendant that he is residing in a premises which does not belong to him. This Court agrees with the contention of the learned Trial Court that after the cross-examination of the petitioner/defendant was completed, the amendments cannot be made to fill up the lacuna or admissions.

11. In view of the aforegoing discussion, this Court finds no ground for interference in the Impugned Order. The

petition is accordingly ***dismissed.*** All pending applications stand closed.

12. The learned counsel for the parties submit that they will not take any unnecessary adjournments in the matter. The parties are bound down by the statement made by their counsels today.

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

(TARA VITASTA GANJU)
JUDGE

BMV*
List No.: 1 Sl No.: 9