HC-KAR
CNR: KAHC010499052025

NC: 2026:KHC:61122
WP No. 22794 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO. 22794 OF 2025 (GM-CPC)

BETWEEN:

1. SRI D.B.HANUMANTHAIAH
   SON OF LATE BOMMEGOWDA,
   AGED ABOUT 65 YEARS

2. SRI.D.B.RAMESH
   SON OF LATE BOMMEGOWDA,
   AGED ABOUT 55 YEARS

3. SRI.D.B.RAMACHANDRA
   SON OF LATE BOMMEGOWDA,
   AGED ABOUT 50 YEARS

4. SRI.D.B.NINGEGOWDA,
   SON OF LATE BOMMEGOWDA,
   AGED ABOUT 48 YEARS

   ALL ARE RESIDING AT
   DODDA ARASINAKERE VILLAGE,
   C.A.KERE HOBLI, MADDUR TALUK,
   MANDYA DISTRICT -571 422

...PETITIONERS

(BY SMT.GEETHA DEVI M.P., ADVOCATE)

Digitally signed by SUVARNA T
Location: HIGH COURT OF KARNATAKA

AND:

SMT.MANGALAMMA @ MANGALA
WIFE OF SHIVALINGA,
MAJOR,
RESIDING AT 2ND CROSS,

WATER TANK ROAD, N.E.S. EXTENSION,
MALAVALLI TOWN,
MALAVALLI -571 430

…RESPONDENT

(BY SRI. K.S.PONNAPPA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS IN RA NO. 32 OF 2018 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE AND JMF AT MADDUR.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 31.08.2026, 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 dated 19.02.2024, passed in I.A.No.IX in RA.No.32/2018 by the Additional Senior Civil Judge and JMFC, Maddur, whereby the Appellate Court dismissed I.A.No.IV, filed under Order VI Rule 17 of the CPC, seeking an amendment to the written statement, the petitioners/defendants are before this Court.

2. The respondent herein, who is the plaintiff, filed O.S. No.476/2013 seeking specific performance, which was decreed by Judgment and Decree dated 21.07.2018. Aggrieved by the same, the defendants filed an appeal in R.A.No.32/2018. In the

appeal, the defendants filed I.A.No.IX under Order VI Rule 17 read with Section 151 of CPC, seeking to amend the written statement by adding Paragraph Nos. 2(A) to (D) and 3(A) to (E). The defendants also filed I.A.Nos.IV and V under Order XLI Rule 27 of the CPC. It is the case of the defendants that they could not raise the legally and factually available defences in the earlier written statement. Their earlier advocate was not in good health during the trial before the Trial Court. He had suffered a stroke and, during that period, had to visit Bengaluru frequently. Defendant No.1 was also involved in facilitating his daughter's studies abroad. Therefore, he could not collect the facts and documents. Some of the proposed amendments are new, while others are additional pleadings. They are required for the just and proper decision of the appeal. The suit/appeal involves the valuable rights of the defendants in respect of the immovable property. Therefore, if the application is not allowed, the defendants will be put to greater hardship, injury and inconvenience. The Appellate Court, by the order impugned, rejected I.A.No. IX.

3. While rejecting I.A.No.IX, the Appellate Court observed that the first reason assigned by the defendants for the delay was that their earlier advocate was unwell and had suffered a stroke. The Appellate Court further observed that the application sought an amendment to the written statement, not permission to file it. However, the written statement had already been filed. In that case, this defence was not available. Another contention was that Defendant No.1 was facilitating his daughter's studies abroad and, hence, could not collect the requisite facts and documents. The Appellate Court observed that it was not the defendants' case that Defendant No.1 was involved in facilitating his daughter's studies abroad for the entire 5 years. It was not his case that he could not contact his advocate for 5 years due to preparations for his daughter's studies abroad. He had not stated in which year or on what dates he had to be involved in facilitating his daughter's studies abroad. Having failed to raise the contentions sought to be introduced by the proposed amendment for a long time during the trial and before the Appellate Court, the present

amendment application could not be considered after a lapse of 8 years.

4. The Appellate Court further observed that, even with respect to the nature of the amendment, according to the defendants' own version pleaded in the affidavit, some of the grounds raised in the amendment were new and some were additional. However, the affidavit also specified which grounds were new, which were additional, and the necessity and relevance of each. According to the defendants' defence, the transaction between them and the plaintiff was a money transaction. According to them, Defendant No.1 was in dire need of money and signed the document on the plaintiff's assurance. However, the plaintiff created the document. The Appellate Court observed that, in the proposed amendment, the defendants stated that O.S.No.158/2013 was pending. However, in the written statement, the defendants had already pleaded the pendency of the case. Therefore, the question of stating it again did not arise. Even with regard to the alleged contention that the suit property was worth more than Rs.20 lakhs, there was already a pleading in the plaint. No new

grounds were raised in the application. The only new ground sought to be added by way of amendment to the defence was the non-service of notice alleged to have been issued by the plaintiff. However, as mentioned above, there was no explanation as to why this contention was not raised in the earlier written statement. It was not the contention of the defendants that they were unaware of the non-service of notice and, hence, there was no delay in stating the said facts in the written statement. Such being the case, in the absence of cogent and convincing reasons for not stating it in the earlier written statement and for the delay in seeking the proposed amendment, the Court could not permit the defendants to carry out the amendments contrary to the settled principles governing amendments and the proviso to Order VI Rule 17 of the CPC. Hence, the Court took the view that the amendment could not be permitted.

5. The Appellate Court further observed that Defendant No.1 had stated that the proposed amendment did not raise any legally or factually available defences. However, as mentioned above, no defence was factually raised at all. Most

of the proposed amendments were in the nature of evidence. As mentioned above, the only defence found to have been factually raised concerned the non-service of notice. However, no acceptable, cogent or convincing reasons were forthcoming from the defendants to overcome the barrier provided under the proviso to Order VI Rule 17 of the CPC. Accordingly, the Appellate Court rejected the application.

6. When it came to the applications filed under Order XLI Rule 27 of the CPC, the Appellate Court observed that Defendant No.1 had filed affidavits sworn by him. In the said affidavits, it was stated that, before the Trial Court, his advocate was not in good health and had suffered a stroke. He had to visit Bengaluru frequently. The defendant's daughter was pursuing her studies in Russia, and he had to perform his daughter's marriage. Therefore, he could not collect and produce certain documents. On the other hand, the plaintiff had filed detailed objections. At the outset, it is pertinent to note that the defendants had not led any evidence before the Trial Court. Though the defendants had filed applications to lead defence evidence, the said applications were rejected by the

Trial Court. Therefore, neither oral nor documentary evidence on behalf of the defendants was on record. It is pertinent to note that, as rightly contended by the defendants, the appeal involved valuable rights of the defendants in respect of immovable property. In the written statement, the defendants had raised a specific defense that the transaction between the defendants and the plaintiff was not a sale transaction but a loan transaction. In order to substantiate the said defence, the proposed documents were highly relevant. Though the plaintiff objected to the application, she had not stated how she would be put to hardship if the application was allowed. Accordingly, the Appellate Court allowed the applications filed by the defendants under Order XLI Rule 27 of the CPC, subject to payment of costs of Rs.1,000/- each. Therefore, the pronouncement of the judgment was deferred.

7. Learned counsel for the petitioners/defendants submits that the finding of the Appellate Court that the amendment is an afterthought is not sustainable, as the Appellate Court failed to consider the petitioners' contention that they had already pleaded that the alleged sale agreement was false, that the

transaction was actually a loan transaction, and that the petitioners sought to elaborate on this aspect of the loan transaction by adding additional facts. In addition, the petitioners contended that the value of the property was more than Rs.20 lakhs and that it could not have been sold for a small amount. In support of these additional facts, documents were produced, which would not prejudice the plaintiff. It is submitted that the finding of the Appellate Court that there was a delay in filing the application for amendment is also not sustainable, as the Apex Court, in a catena of judgments, has held that amendments should generally be allowed to avoid multiplicity of litigation. It is submitted that the Appellate Court failed to follow the guidelines pertaining to the amendment of pleadings laid down by the Apex Court in the case of ***LIC Vs. Sanjeev Builders***[1] and also the judgment of the Apex Court in the case of ***Jai Jai Ram Manohar Lal Vs. National Building Material Supply***[2], wherein the Hon'ble Apex Court held that the power to amend pleadings is intended to serve the ends of justice and is not governed by any narrow or technical

[1] (2022) 16 SCC 1
[2] AIR 1969 SC 1267

limitation or delay. The Appellate Court erred in relying upon the judgments in ***Jambulingaiah Hiremath Vs. Akkama Devi and Others***[3] and ***Gayatri Women's Welfare Association Vs. Gowramma and Another***[4], which are not applicable to the facts and circumstances of the case. It is submitted that there was a delay in questioning the impugned order because the petitioners were entirely unaware of the legal proceedings and acted on the advice and belief that they could raise the plea in their evidence. However, when they consulted the present advocate in Bengaluru, they were informed that, without pleadings, evidence alone would be of no avail. Hence, the petitioners have filed this petition. Learned counsel submits that the impugned order needs to be set aside and that the application may be allowed, permitting the petitioners to amend the written statement.

8. Learned counsel for the respondent/plaintiff submits that the defendants filed the written statement on 07.04.2016, and the judgment was passed on 21.07.2018. On 02.11.2018, the defendants filed the appeal. The amendment application

[3] ILR 2020 KAR 2045
[4] (2011) 2 SCC 330

was filed on 06.09.2021, almost 3 years after the filing of R.A.No.32/2018. The Appellate Court rejected the application on 19.02.2024, and, aggrieved thereby, the petitioners filed this petition on 24.07.2025. It is submitted that the application is hit by the proviso to Order VI Rule 17 of the CPC and was filed after an unexplained delay of nearly 8 years from the institution of the suit, indicating that the proposed amendment is an afterthought. It is submitted that there was no due diligence. The contention that the counsel was unwell and frequently travelled to Bengaluru may, at best, explain the delay in filing the written statement; it does not explain the failure to raise the proposed contentions at the stage of filing the written statement. It is submitted that the plea regarding the illness of the counsel is contrary to the stand taken before the Trial Court, where the affidavits filed in I.A.Nos.IV and V, seeking permission to lead defence evidence, assign reasons stating that Defendant No.1 was ill and not the advocate. No supporting medical or other documents were produced in respect of either version. It is submitted that the Appellate Court rightly considered all these aspects and rejected the

application, and there are no grounds to interfere. He relied on the judgment of the Apex Court in the case of ***Ajendraprasadji N. Pandey and Another Vs. Swami Keshavprakeshdasji N.***[5] and Others. He relied on Paragraph Nos. 34 to 36, 61 and 62, which read thus:

> ***"34. It is seen that before the amendment of Order 6 Rule 17 by the Act 46 of 1999, the Court has taken a very wide view of the power to amend the pleadings including even the plaint as could be seen from H.J. Leach vs. Jardine Skinner, 1957 SCR 438 at 450 and Gurdial Singh vs. Raj Kumar Aneja, AIR 2002 SC 1003.***
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> ***35. By Act 46 of 1999, there was a sweeping amendment by which Rules 17 and 18 were wholly omitted so that an amendment itself was not permissible, although sometimes effort was made to rely on Section 148 for extension of time for any purpose.***
>
> ***36. Utlimately to strike a balance the Legislature applied its mind and re-introduced Rule 17 by Act 22 of 2002 w.e.f. 1.7.2002. It had a provision permitting amendment in the first part which said that the Court may at any stage permit amendment as described therein. But it also had a total bar introduced by a proviso which prevented any application for amendment to be allowed after the trial had commenced unless the Court came to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. It is this proviso which falls for consideration.***
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> ***61. We can also usefully refer to the judgment of this Court in Baldev Singh and Others vs. Manohar Singh and Another, (2006) 9 SCC page 498 for the same proposition. A perusal of the proposed amendment would show that it contains numerous***

[5] (2006) 12 SCC 1

averments. So far as the averments in the proposed amendments are concerned, at page 12 of the order in para 22, the appellants admit that all the issues raised by way of proposed amendment in the written statement were taken before this Court in the appeal from order filed by the present defendants in the civil appeal filed before this Court and again in the special leave petition filed subsequent. As rightly pointed out by learned senior counsel in any section should not be so interpreted that part of it becomes otiose and meaningless and very often a proviso itself is read as a substantive provision it has to be given full effect.

62. It is sad and unfortunate that the Swamijis/Sanyasis/ members of the Sangh seem to have paid their attention more to litigation than to the propagation of the teachings of Swami Narayan. This situation should change. If the time, energy and money spent on litigations and feuding had been spent for carrying on the wishes of the founder of the institution, things would have reached very great and amazing heights. We have, therefore, to voice our anxiety in this matter and request that the system and administration should be fairly and properly bridled, to prevent recurrence or repetition of feuds, which have already to some extent shattered the reputation of this great majestic institution, which has very vast resources and assets. Therefore, it is high time that proper remedial measures are taken by all concerned."

9. He relied on another judgment of the Apex Court in ***Shivshankara and Another Vs. H.P. Vedavyasa Char***[6], and paragraph Nos.24 and 28 which read as follows:

"24. We are not oblivious of the settled position that in dealing with prayers for amendment of the

[6] (2023) 13 SCC 1

pleadings the Courts should avoid hyper technical approach. But at the same time, we should keep reminded of the position that the same cannot be granted on the mere request through an application for amendment of the written statement, especially at the appellate stage, where, what is called in question is the judgment and decree passed by the trial Court and, in other words, after the adverse decree and without a genuine, sustainable reason. In short, the circumstances attending to the particular case are to be taken into account to consider whether such a prayer is allowable or not and no doubt, it is allowable only in rarest of rare circumstances.

28. The fact that the defendants were given opportunities to file additional written statements for not less than eight times after the amendment of the plaint, in between the period 07.03.1996 till the framing of the issues viz. 15.04.1997, that in the interlocutory application filed in RFA No.1966 of 2007 based on which the trial Court was directed to afford opportunity to the defendants to adduce evidence as per judgment and decree passed on 29.10.2007 they sought permission only to adduce evidence, contending that they were deprived of opportunity to adduce evidence and even at that point of time no permission was sought for amending the written statement, were taken into consideration by the High Court. Evidently, the High Court also observed that if the amendment of written statement was allowed at that stage, it would have necessitated framing of fresh issues and parties were to agitate their rights as if in a de novo trial."

10. Relying on the above judgments, it is submitted that the writ petition is liable to be dismissed.

11. Having heard the learned counsel on either side, perused the material on record. The question that arises for

consideration is whether the Appellate Court was justified in refusing to amend the written statement while permitting additional evidence on the same facts, without examining whether the evidence sought to be introduced could be considered on the basis of the existing pleadings. The purpose of pleadings is to identify the facts upon which the parties seek adjudication of their rights. Evidence is intended to establish those facts. A party cannot introduce an entirely new factual case through evidence without affording the opposite party an opportunity to meet the case in the pleadings. In ***Bachhaj Nahar Vs. Neelima Mandal***[7], the Hon'ble Supreme Court emphasised that a Court cannot decide a dispute on a factual foundation that was never pleaded merely because some evidence relating to it has been brought on record. This principle assumes particular importance in the present case. The Appellate Court has permitted additional evidence but has not examined whether the documents sought to be produced relate to the defence already pleaded or whether they are intended to establish facts that find no place in the written statement. The distinction is material. If the documents merely

[7] (2008) 17 SCC 491

support or explain an existing defence, no amendment may be necessary. If they are intended to establish an independent factual defence, the absence of a corresponding pleading cannot be overlooked. The Hon'ble Supreme Court in the case of ***Iqbal Ahmed (Dead) by LRs Vs. Abdul Shukkur***[8] considered this very question in an appeal arising from a decree of specific performance. The Appellate Court permitted the defendants to produce additional evidence and relied on that evidence while reversing the decree. The Hon'ble Supreme Court held that, before permitting additional evidence under Order XLI Rule 27 of the CPC, the Court must examine whether the case sought to be established is supported by the pleadings. In the absence of the necessary factual foundation, such evidence may be incapable of being considered. The matter was consequently remitted for fresh consideration.

12. The difficulty with the impugned order becomes apparent when both applications are considered together. On the one hand, the Appellate Court considered it appropriate to permit the defendants to adduce additional evidence. On the other hand, it declined to examine whether any of the proposed

[8] 2025 INSC 1027

amendments were necessary to consider that evidence. The Court was required to consider the relationship between the existing pleadings, the proposed amendments and the documents sought to be introduced. Without undertaking that exercise, the refusal to allow the amendments remains incomplete. This does not mean that permission to adduce additional evidence automatically entitles the defendants to amend the written statement. The requirements of Order VI Rule 17 and Order XLI Rule 27 of the CPC are distinct. The Appellate Court was justified in observing that evidence and propositions of law need not ordinarily be incorporated in pleadings. However, the application also referred to additional material facts and subsequent events. Those averments require separate consideration. The Appellate Court ought to have examined whether they were necessary for the adjudication of the appeal rather than treating all the proposed amendments alike.

13. There is another issue with regard to the delay. The suit has already been decreed, and the application for amendment was made at the appellate stage. Order VI Rule 17

of the CPC requires the defendants to show that, despite due diligence, the matter could not have been raised before the commencement of the trial. The explanation that the advocate was unwell cannot, by itself, satisfy this requirement. The defendants must explain which material facts were omitted, when they came to know of them, and why they could not have been pleaded earlier. The Hon'ble Supreme Court in ***Vidyabai Vs. Padmalatha***[9] has held that the requirement of due diligence is mandatory once the trial has commenced. The position may, however, be different with respect to subsequent events. Facts that arose after the written statement was filed could not have been incorporated at that time. If such events have a material bearing on the controversy, the Court may consider permitting their introduction, subject to their relevance, the stage at which they occurred and the explanation for the delay in bringing them to the notice of the Court. An amendment that elaborates an existing defence also stands on a different footing from one that introduces a new and inconsistent case. These distinctions are particularly important when the plaintiff already holds a decree for specific

[9] (2009) 2 SCC 49

performance and should not be subjected to an entirely different defence without sufficient justification.

14. The order permitting additional evidence is not challenged in the present proceedings. This Court is, therefore, not concerned with its correctness. In the light of the above facts and circumstances, the Appellate Court ought to have examined the proposed amendments individually to determine whether they contain material facts necessary for considering the additional evidence already permitted and whether they merely elaborate the existing defence or introduce an altogether new case. The impugned order does not reflect such an examination. The rejection of the application on the ground of delay and the observation that the proposed amendments relate to evidence and law, without addressing these distinctions, cannot be sustained. This Court is not inclined to permit the amendments in their entirety merely because additional evidence has been allowed. Such a course would dispense with the scrutiny required under Order VI Rule 17 of the CPC and prejudice the plaintiff, who has been holding a decree since 21.07.2018. The appropriate course is to remit the

application for consideration, leaving it to the Appellate Court to determine which, if any, of the proposed amendments are permissible in law. In that view of the matter, this Court passes the following order:

ORDER

i. The order dated 19.02.2024, passed in I.A.No.IX in RA.No.32/2018 by the Additional Senior Civil Judge and JMFC, Maddur, is ***set aside,*** and the matter is ***remanded back*** to the First Appellate Court for fresh consideration in light of the existing pleadings, the nature of the proposed amendments, and the additional evidence already permitted.

ii. The First Appellate Court shall also examine whether the defendant satisfied the requirement of due diligence under the proviso to Order VI Rule 17 CPC and whether permitting any of the amendments would prejudice the plaintiff.

iii. The First Appellate Court shall dispose of the application expeditiously and hear the appeal without unnecessary delay.

iv. Accordingly, the writ petition is ***allowed***.

v. All I.As. in this petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

MEG
List No.: 1 Sl No.: 7
*AK