IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

R

BEFORE

THE HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO. 24419 OF 2024 (GM-CPC)

BETWEEN:

M/S. VARCITY COMFORTS
A REGISTERED PARTNERSHIP FIRM,
WITH ITS OFFICE AT NO.17,
2ND CROSS, MARUTHI NAGAR,
BENGALURU-560 029.
REPRESENTED BY ITS PARTNERS.
MR. KASARGOD MOHAMMED HANEEF.

...PETITIONER

(BY SRI. PONNANNA.M.B., ADVOCATE)

AND:

MR. M.VISHWANATH
AGED ABOUT 61 YEARS,
R/AT NO 426/26,
LAKSHMI KRUPA,
2ND MAIN, AMAR JYOTHI LAYOUT,
RMV II STAGE, SANJAYANAGAR,
BENGALURU-560 094.

...RESPONDENT

(BY SRI. SAI SAGAR.M., ADVOCATE FOR
SRI. SUDHAMMA.D.S., ADVOCATE)

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

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR RECORDS IN O.S NO. 25651 OF 2020 PENDING BEFORE THE FILE OF PASSED BY THE COURT OF LXXII ADDL CITY CIVIL AND SESSIONS JUDGE AT MAYO HALL, BENGALURU (CCH-73) SETTING ASIDE THE IMPUGNED ORDER DTD 06.08.24 AT ANNEXURE-A OF IA NO.

1/2024 IN THE FILE OF XXII ADDL CITY CIVIL AND SESSION JUDGE (CCH-73) AT BENGALURU IN OS 25261/20.

THIS PETITION, 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 06.08.2024 in O.S.No.25651/2020 passed by the LXXII Addl. City Civil and Sessions Judge, Mayo Hall, Bengaluru (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, the application under Order 6 Rule 17 read with Section 151 of the Civil Procedure Code (hereinafter referred to as the 'CPC') filed by respondent/defendant at the post-trial stage has been allowed on payment of cost of Rs.3,000/- to the petitioner/plaintiff.

2. Learned counsel for the petitioner/plaintiff submits that the trial had already commenced. He further submits that once the trial commences in the matter, the proviso to Order 6 Rule 17 of the CPC is required to be made

applicable and due diligence has to be showed. Learned counsel further submits that the application does not set out any ground reflecting due diligence. In addition, it is contended by the petitioner/plaintiff that no findings have been given in the Impugned Order and there is no discussion on the proviso to Order 6 Rule 17 of the CPC either.

3. Learned counsel for the respondent/defendant on the other hand submits that the trial has just recently commenced. However, the grounds under Order 6 Rule 17 of the CPC are stated in the application which states that the counsel for the respondent had been changed and certain defences were not taken up earlier. Learned counsel further submits that the amendment sought were *bonafide.*

4. Briefly the facts are that a suit was filed by the petitioner/plaintiff for recovery of money and other reliefs including interest on 16.06.2020. The suit was defended

by the respondent/defendant by filing a written statement on 25.03.2021. Thereafter, an application was filed under Order 6 Rule 17 of the CPC being I.A.No.1/2024 seeking an amendment in the written statement on 19.02.2024. It is stated in the application that the reasons for filing the application are that the respondent/defendant has changed his advocate and while preparing for cross-examination, he was advised to take some defences and amend the written statement. The application as well as paragraph 3 and 4 of the affidavit is below:

> "***APPLICATION UNDER ORDER VI RULE 17 R/W SECTION 151 OF CODE OF CIVIL PROCEDURE.***
>
> *For the reasons sworn to in the accompanying affidavit it is most respectfully prayed that this Hon'ble court be pleased to allow the defendant to amend the written statement in the below mentioned manner:*
>
> *In paragraph No.3 in 1st line delete the words 'paragraph Nos.1 to 4' and add 'Paragraph No.1&2'.*
>
> *In Paragraph No.3 after the last sentence add 'The averments made in paragraph no.3 of the plaint are hereby denied as false and the plaintiff is hereby put to strict proof of the same'.*
>
> *After Paragraph No.3 add Paragraph No. '3(a).* ***The plaintiff firm is not a registered partnership firm at the time of entering in to lease deed on 05/04/2018 and hence it cannot file a suit to***

enforce it's rights arising out the lease deed dated 05/04/2018 and the above suit is barred by the Law of Indian Partnership Act, 1932. The plaintiff has re-constituted by a deed dated 02/06/2020 which was registered on 06/06/2020 i.e., 10 days prior to filing of the above suit with malafide intention *only to fill up the lacuna in filing of the above suit. The partner representing the plaintiff is also not shown as partner in the Register of Firms on the date of filing of the above suit. Hence the above suit is not maintainable and is liable to be dismissed'.*

"AFFIDAVIT

1. xxx xxx xxx

2. xxx xxx xxx

3. I submit that at the time of filing my written ***statement I could not take some defense which has material bearing on the case. After I changed my Advocate and while preparing for cross examination I was advised by my present Advocate to take the defense and consequently to amend the written statement.***

4. I submit that ***I am a layman and I am not aware of the legal procedures and hence non taking of the proposed defense is not intentional one and for the*** *Bonafide reason aforementioned. Hence it is just and necessary to amend the written statement as mentioned in the accompanying application."*

[Emphasis Supplied]

5. In its Objections filed to the application, the petitioner/plaintiff has in addition to taking grounds on the merits of the averments, sought to state that the

application has been filed at a belated stage and it will lead to delay the proceedings.

6. The Impugned Order, however, has allowed the application stating that it is not clear as to what type of prejudice would be caused to the petitioner/plaintiff and the objection only sets out the details of contentions which have been taken in the written statement. It further holds that the proposed amendment is necessary for an effective decision on merits. The relevant extract of the Impugned Order is below:

> *"12. On perusal of the proposed amendment with the facts and circumstances of this case, it is clear that the* ***Defendant wanted to explain the details of contentions which is already been taken by him in the written statement. So, if this application is allowed no injustice would cause to the Plaintiff.*** *On the other hand, on careful perusal of the entire contents of the proposed amendment,* ***it appears that the proposed amendment is appears to be necessary for effective decision of this suit on merits.*** *By allowing this application some inconvenience would cause to the plaintiff, however that can be compensated in terms of money. Accordingly, Point No.1 is answered in the affirmative."*
>
> [Emphasis Supplied]

7. This Court is unable to agree with the findings of the learned Trial Court. In the first instance, the Court has failed to take into consideration proviso to Order 6 Rule 17 of the CPC which reads as follows:

> *"17. Amendment of pleadings.—The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties:*
>
> ***Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial."***
>
> [Emphasis supplied]

8. Secondly, the learned Trial Court has in fact not given any reason for allowing this application. The application itself sets out that the petitioner/plaintiff's firm was registered 10 days prior to filing of the suit. Hence, the possibility of rejection under Section 69 of the Partnership Act in this regard was overcome prior to the filing of the suit. The other amendments also appear to be of no consequence to the defence. The Impugned Order only

holds that what type of prejudice would be caused is not stated by the petitioner/plaintiff in the objections.

9. The Supreme Court in ***Haramani Sahoo v. Lalita Nayak***[1]***,*** while considering the scope of amendment of pleadings under Order VI Rule 17 of the CPC at the post-trial stage has held that an amendment sought after commencement of trial may be permitted where the applicant furnishes a sufficient explanation demonstrating that, despite due diligence, the matter could not have been raised earlier. In addition, it has been held that if the proposed amendment is necessary for effective adjudication of the real controversy without fundamentally altering the nature and character of the suit, the amendment ought to be allowed. The Supreme Court further held that where the proposed amendment bears a direct nexus with the existing controversy and the prejudice occasioned to the opposite party can be addressed by permitting additional pleadings and, where

[1] 2026 SCC OnLine SC 2123

appropriate, imposing costs, the amendment may be allowed, subject to satisfaction of the statutory requirement of due diligence. The relevant extract is set out below:

> *"10.* ***A plain reading of the aforesaid provision makes it clear that Order VI Rule 17 of the CPC confers a discretionary power upon the Court to permit amendments which are necessary for determining the real questions in controversy between the parties. However, once the trial has commenced, the exercise of such power is subject to the additional requirement that the Court must be satisfied that despite due diligence, the party could not have raised the matter before the commencement of trial. The object of the provision is to enable the Court to effectively and completely adjudicate upon the dispute between the parties, while at the same time, ensuring that a party does not introduce at a belated stage, matters which could, with due diligence, have been raised earlier.***
>
> *xxx xxx xxx*
>
> ***12. In the present case, there is no dispute that the application for amendment was filed after commencement of the trial and therefore, the proviso to Order VI Rule 17 of the CPC is attracted. The fact that the amendment was sought at a belated stage is, by itself, not determinative. The principal question is whether, the appellants have shown that despite due diligence, the matters now sought to be introduced could not have been raised before the commencement of the trial. The further question is whether the proposed amendment would fundamentally alter the nature and character of the suit.***
>
> *13. As regards the requirement of due diligence, the original suit concerns the right, title and interest in and*

possession of the very property which forms the subject matter of the proposed amendment. The proposed pleading relating to the compromise decree passed in T.S. No. 105 of 1998 arises from the allegation that the said decree affects a portion of the very suit property, namely, Ac. 0.02 decimals comprised in Hal Plot No. 3371/4050. The case of the original plaintiff is that he was not a party to the said suit and was unaware of the compromise decree. It is stated that only upon obtaining certified copies of the plaint and final decree on 22.06.2020, did he come to know of the compromise in respect of suit plot No. 3371/4050 measuring Ac. 0.04 decimals along with other properties between Defendant No. 8 and others. It is further stated that the written statement filed by Defendant Nos. 9 and 10 did not disclose the source of title of their vendors.

13.1. The significance of these circumstances cannot be overlooked. The proposed amendment is not founded upon a transaction or an event wholly unconnected with the subject matter of the suit, but upon a subsequent discovery of a decree which, according to the original plaintiff, has a bearing upon the title to a portion of the very property in dispute*. The record indicating that certified copies of the plaint and final decree were obtained on 22.06.2020 is a relevant circumstance in assessing the plea of due diligence.* ***At this stage, it is not necessary for the Court to finally determine whether the plaintiff's assertion regarding the date of knowledge is ultimately correct. What is required is to examine whether sufficient explanation has been furnished for not raising the matter before commencement of the trial.***

13.2. Having regard to the aforesaid circumstances, we are of the view that the explanation furnished by the appellants cannot, at this stage, be characterised as a mere omission, inadvertence or negligence. The subsequent discovery of the compromise proceedings, coupled with the assertion that the original plaintiff was not a party to those proceedings and that the source of title of the vendors was not disclosed in the written statement, ***provides a sufficient basis for accepting the plea of due diligence for the purposes of the***

proviso to Order VI Rule 17 of the CPC. The statutory requirement is therefore satisfied.

xxx *xxx* *xxx*

14.1. ***The real inquiry is whether the amendment introduces a distinct and independent controversy having no connection with the original cause of action, or whether it merely brings on record additional facts and consequential reliefs having a direct nexus with the existing controversy.*** *On the facts of the present case, the proposed amendment falls within the latter category.* ***The subject matter of the proposed amendment and the original suit substantially overlap, and the adjudication of the proposed issue would have a direct bearing upon the title and possession claimed in respect of the suit property.***

xxx *xxx* *xxx*

19. The objection as to prejudice also does not warrant rejection of the amendment. The prejudice relied upon by the respondents principally arises from the additional factual and legal issues which they would now be required to meet. Such prejudice can adequately be addressed by permitting the respondents to file an additional written statement and where necessary, by imposing appropriate costs. The mere fact that an amendment requires the opposite party to meet additional pleadings or issues does not, by itself, warrant refusal of the amendment where the amendment is necessary for a complete and effective adjudication of the controversy."

[Emphasis Supplied]

10. The learned Trial Court has however not set out reasons as are requisite for a post commencement of trial, amendment.

11. Accordingly, and in view of the reasons set out above, the writ petition is ***allowed.*** The Impugned Order is set aside. All pending applications stand closed.

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

(TARA VITASTA GANJU)
JUDGE

YN
List No.: 1 Sl No.: 47