Reserved on: **22.09.2026**
Pronounced on: **03.11.2026**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 27233 OF 2026 (GM-CPC)

BETWEEN:

1. SARASWAT CO OPERATIVE BANK LIMITED
BANK REGISTERED UNDER THE
PROVISIONS OF MULTI-STATE
CO-OPERATIVE SOCIETIES ACT, 2002
HAVING ITS REGISTERED
OFFICE AT EKANATH THAKUR
BHAWAN, 953, APPASAHEB
MARATHE MARG, PRABHADEVI,
MUMBAI- 400 025 AND ITS
RECOVERY DEPARTMENT AT
6TH FLOOR, HILL TOP BUILDING,
ANANT VISHRAM NAGWEKAR MARG,
HATISKAR WADI, NEAR BABASAHEB
WORLIKAR CHOWK, PRABHADEVI,
MUMBAI-400025 AND
HAVING ITS BRANCH OFFICE
AT PAMADI TOWERS,
KALIDASA MARG,
GANDHI NAGAR,
BANGALORE - 560 009

REPRESENTED BY ITS
AUTHORIZED SIGNATORY,
SRI. MANJUNATH H MANKANI

...PETITIONER

(BY SRI B. C. AVINASH, ADVOCATE)

Digitally signed by VINUTHA B S
Location: High Court of Karnataka

AND:

1. M/S ROYALE BUILDERS AND DEVELOPERS
A REGISTERED PARTNERSHIP FIRM,
HAVING ITS REGISTERED OFFICE AT
NO.4406/7/8, HIGH POINT IV,
45, PALACE ROAD,
BANGALORE 560 001
REPRESENTED BY ITS
MANAGING PARTNER
MR. SURESH BHATIA

…RESPONDENT

(BY SRI AJAY J NANDALIKE, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE IMPUGNED ORDER DATED 14/07/2026, VIDE ANNEXURE K, PASSED BY THE HON'BLE LXXXVIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (EXCLUSIVE COMMERCIAL COURT), BANGALORE, CCH-89 ON I.A. NO.8 IN O.S. NO.1233/2024 ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

C.A.V. ORDER

This petition is filed by the defendant in Com.O.S.No.1233/2024, impugning the order dated 14.07.2026 passed by the LXXXVIII Additional City Civil and Sessions Judge, Bengaluru (for short 'Commercial Court') whereby the application filed under Order VI Rule 17 of the

CPC, seeking amendment of the written statement, came to be rejected.

2. The brief facts of the case are that the respondent-plaintiff instituted the suit against the petitioner-defendant, seeking a direction to pay a certain sum along with interest. The respondent-Firm is engaged in the business of real estate. The petitioner-Bank, pursuant to the recovery proceedings in respect of a loan, notified certain mortgaged properties for auction sale, pursuant to which the respondent made certain deposits. Thereafter, the transaction remained inconclusive for various reasons, and the deposit continued to remain with the Bank. The suit came to be instituted for recovery of the said deposit.

2.1 The petitioner-Bank initially did not appear before the Commercial Court despite service of the suit summons and was accordingly placed ex parte. The order placing the petitioner ex parte was subsequently recalled, and the petitioner was permitted to file its written statement. Thereafter, the petitioner filed an application seeking amendment of the written statement, which came to be allowed by the Commercial Court. An application was filed under Order VII

Rules 11(a) and (d) of the CPC, seeking rejection of the plaint. Thereafter, the petitioner proposed a settlement, which, however, was not reported to the Commercial Court. The application filed under Order VII Rules 11(a) and (d) of the CPC came to be rejected. The plaintiff-respondent proceeded to record its evidence, and documents were marked in evidence. Subsequently, certain applications were filed, to which the petitioner-Bank filed its objections. At this stage, the impugned application seeking amendment of the written statement was filed, raising a plea that the suit was barred for non-compliance with Section 115 of the Multi-State Co-operative Societies Act, 2002 (for short, 'the Act'). The Commercial Court, by the impugned order, rejected the said application.

3. Learned counsel appearing for the petitioner submits that the suit has been instituted against a Multi-State Co-operative Society, and therefore, compliance with Section 115 of the Act is mandatory. It is submitted that no suit shall be instituted against a Multi-State Co-operative Society until the expiry of 90 days from the date of service of notice to the Central Registrar. Learned counsel further submits that the requirement under Section 115 of the Act is mandatory and that, even in the

absence of a specific plea in the written statement, it is incumbent upon the Court to insist upon compliance with the said provision before exercising its jurisdiction.

3.1 It is submitted that the provisions of Order VI Rule 17 of the CPC, insofar as they relate to amendment of the written statement, are required to be considered liberally, even where the proposed amendment seeks to introduce new pleadings or pleadings inconsistent with the earlier pleadings in the written statement. In support of the said submission, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Usha Balashaheb Swami and Others v. Kiran Appaso Swami and Others***[1].

4. Per contra, learned Senior Counsel appearing for the respondent submits that the petitioner never pleaded or disclosed that it is governed by the Multi-State Co-operative Societies Act, either to the plaintiff or to the Commercial Court, to enable the applicability and compliance of Section 115 of the Act to be examined. It is submitted that, though the maintainability of the suit was questioned in the written statement on various grounds, the applicability of Section 115

[1] ***(2007) 5 SCC 602***

of the Act was never pleaded. It is further submitted that the petitioner had filed an application under Order VII Rule 11 of the CPC seeking rejection of the plaint, which came to be dismissed. Though the examination-in-chief of PW-1 was completed, the witness was not cross-examined for a substantial period. It is submitted that, when all attempts to delay the proceedings failed, the present application seeking amendment of the written statement, introducing a plea of non-compliance with Section 115 of the Act, has been filed without even prima facie establishing the applicability of the said provision.

4.1 Learned Senior Counsel submits that Section 115 of the Act is not applicable to every suit instituted against a Multi-State Co-operative Society unless the parameters stipulated therein are shown to be prima facie applicable. It is submitted that an amendment to the written statement, after commencement of the trial, cannot be permitted unless the requirement of due diligence at the time of filing the written statement is established. It is further submitted that amendment of the written statement cannot be claimed as a matter of right. Learned Senior Counsel also submits that the

amendment now sought would seriously prejudice the rights accrued to the respondent and would have a bearing on the question of limitation. In support of the above submissions, learned Senior Counsel places reliance on the judgment of the Hon'ble Supreme Court in ***Basavaraj v. Indira and Others***[2]***.***

4.2 It is also submitted that the notice contemplated under Section 115 of the Act is not mandatory, but is merely procedural in nature. It is submitted that, by not raising the issue of compliance with Section 115 of the Act at the threshold, the petitioner is deemed to have waived such requirement. In support of the said submission, reliance is placed on the judgment of the Hon'ble Supreme Court in ***State of A.P. and Others v. Pioneer Builders***[3]***.***

5. Considered the submissions made by the learned counsel for both parties.

6. The events and dates referred to hereinabove are not in dispute. Two issues arise for consideration, which are as follows:

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[2] ***(2024) 3 SCC 705***

[3] ***(2006) 12 SCC 119***

(a) Whether, in the facts and circumstances of the present case, amendment of the written statement is permissible?

(b) Whether a prima facie case is made out for invoking Section 115 of the Multi-State Co-operative Societies Act, 2002?

7. Order VI Rule 17 of the CPC provides for amendment of pleadings. The proviso thereto imposes a restriction on entertaining an application for amendment after commencement of the trial. In the present case, by the time the amendment was sought, the examination-in-chief of PW-1 had been completed and documents had been marked in evidence. It is settled position of law that amendment of pleadings may be permitted to avoid multiplicity of proceedings and to facilitate comprehensive and effective adjudication of the dispute. However, once the trial has commenced, the burden lies on the party seeking amendment to establish that, despite due diligence, the amendment could not have been sought at an earlier stage. While considering an application for amendment, the Court is also required to examine whether the application is bona fide or mala fide and whether the proposed

amendment would cause prejudice to the other side which cannot be adequately compensated in terms of money.

7.1 The petitioner is a statutory body, governed by and regulated under an enactment. It cannot be said that the petitioner was unaware of the statutory protection available to it under the enactment in the event of a suit being instituted against it. If a suit is instituted in breach of such statutory protection, ordinarily, the first line of defence would be to question the maintainability of the suit on the ground of such protection or non-compliance with the statutory requirement.

7.2 In the present case, the petitioner has filed a written statement running into 18 pages and containing 52 paragraphs. In paragraph 3 of the written statement dated 10.12.2024, the maintainability of the suit has been questioned, though not with reference to Section 115 of the Act. Till the filing of the impugned application, it was not even pleaded that the petitioner is governed by the Multi-State Co-operative Societies Act. Unless such foundational averment is made, it would not be open to the petitioner to subsequently plead non-compliance with Section 115 of the Act. No doubt, on a plain reading of Section 115 of the Act, the requirement contemplated therein is

mandatory. However, no reasons are forthcoming as to why such a plea was not raised at the earliest stage. The affidavit accompanying the application also does not state that, despite due diligence, the requirement under Section 115 of the Act could not be pleaded earlier.

8. The issue that now arises for consideration is whether the application for amendment is bona fide or mala fide and whether the proposed amendment would cause prejudice to the other side. In order to examine this issue, the conduct of the petitioner is required to be noticed.

8.1 The petitioner was placed ex parte on 14.10.2024. On 05.11.2024, an application was filed seeking permission to file vakalat and to recall the order placing the petitioner *ex parte*. By order dated 03.12.2024, the application filed under Order IX Rule 7 of the CPC came to be allowed, the order placing the petitioner ex parte was set aside, and the petitioner was permitted to file its written statement. The written statement came to be filed on 10.12.2024. Thereafter, certain applications were filed and adjudicated upon. Both sides filed statements of admission and denial of documents. Issues were framed.

8.2 On 12.02.2025, the plaintiff filed its list of witnesses. On the said date, there was no representation on behalf of the petitioner, nor had the petitioner furnished its list of witnesses. Thereafter, the petitioner filed an application under Order XIV Rule 5 of the CPC, pursuant to which an additional issue came to be framed. Subsequently, a few more applications were filed and came to be disposed of.

8.3 On 18.03.2025, the petitioner filed an application under Order VII Rule 11(a) and (d) of the CPC. In the meantime, the petitioner proposed settlement, resulting in deferment of consideration of the said application, which ultimately came to be rejected on 21.11.2025. On 30.01.2026, the plaintiff filed an application under Order XI Rule 4 of the CPC seeking production of documents. Thereafter, on 15.04.2026, the defendant filed an application under Order VI Rule 17 of the CPC seeking amendment of the written statement, which came to be rejected by the impugned order.

8.4 The above dates are relevant for examining the bona fides of the petitioner in conducting the proceedings. The sequence of events referred to above would weigh against the petitioner, particularly when the petitioner appears to have

made repeated attempts resulting in delay in the progress of the suit. As held by the Hon'ble Supreme Court in ***Basavaraj*** (supra), it is not only the necessity for the amendment but also the due diligence exercised in seeking to raise the pleadings proposed to be introduced by way of amendment that is required to be established. In the present case, there is neither any pleading nor any averment by the petitioner explaining the due diligence exercised in seeking the proposed amendment.

8.5 Amendment of the written statement cannot be claimed as a matter of right and cannot be permitted where the proposed amendment would cause prejudice to the other side which cannot be adequately compensated in terms of money. In the present case, permitting the proposed amendment with reference to Section 115 of the Act would undoubtedly cause prejudice to the respondent. Hypothetically, if the plea regarding the maintainability of the suit on the ground of non-compliance with Section 115 of the Act had been raised in the written statement and the same had been adjudicated upon, depending upon the finding regarding the applicability of the said provision, the suit could have been re-presented after complying with the statutory requirement. At this stage, if such a plea is permitted to be raised and it is ultimately held that

Section 115 of the Act is applicable, the question of limitation for re-presentation of the suit after compliance with Section 115 of the Act would arise.

8.6 The prolonged adjournments and the manner in which the proceedings have progressed, particularly at the instance of the petitioner, coupled with the failure to raise the plea at the earliest opportunity, do not demonstrate bona fides in seeking the proposed amendment. The attempt to raise the plea of a statutory bar at this belated stage, instead of raising it at the threshold, has the effect of further delaying the proceedings and would cause prejudice to the respondent, which cannot be adequately compensated in terms of money.

8.7 Even assuming that the applicability of Section 115 of the Act is to be examined prima facie, the affidavit accompanying the application for amendment does not even remotely plead as to how the said provision is attracted to the present suit. The amendment has been sought on the premise that every suit instituted against the petitioner would attract Section 115 of the Act. Such an understanding of the provision is impermissible.

8.8 As per a plain reading of Section 115 of the Act, the bar against institution of a suit without issuance of notice is attracted where the issues relate to the constitution, management or business of the Society. If the transaction in question is examined in brief, the petitioner had notified certain properties for public auction for recovery of its loan. The respondent participated in the public auction and made certain deposits. As the auction proceedings did not fructify, the deposit was not refunded, resulting in institution of the suit.

8.9 The transaction relating to refund of the amount deposited pursuant to the auction proceedings cannot, prima facie, be said to relate to the constitution, management or business of the Society. In the absence of a prima facie case establishing the applicability of Section 115 of the Act, the proposed amendment seeking to introduce a plea with reference to the said provision need not be entertained, particularly when the circumstances do not disclose bona fides in seeking such amendment. Perhaps for this reason, the applicability of Section 115 of the Act was not pleaded in the first instance, when the maintainability of the suit was questioned on other grounds.

8.10 No doubt, the applicability of Section 115 of the Act is ultimately a matter for consideration by the Commercial Court. However, when such an amendment is sought without demonstrating bona fides and when the circumstances indicate that it is intended to delay adjudication of the suit and would cause serious prejudice to the rights of the other party, the Commercial Court was justified in rejecting the application for amendment.

9. It is also a settled position of law, as held by the Hon'ble Supreme Court in ***Basavaraj*** (supra), that where the proposed amendment causes prejudice to the other side or seeks to take away a right that has accrued to the other party, such amendment cannot be permitted.

9.1 The reliance placed by the learned counsel for the petitioner on the judgment in ***Usha Balashaheb Swami (supra)***, to contend that a liberal approach is required to be adopted while considering an application for amendment of the written statement, is not applicable to the facts and circumstances of the present case. In the said judgment, the Hon'ble Supreme Court has held that, in cases involving amendment of a written statement, the Courts may adopt a

more liberal approach, even where the amendment has the effect of introducing a new ground of defence, substituting or altering a defence, or taking inconsistent pleas. However, such an amendment remains subject to the other requirements governing amendment of pleadings, including the requirement of due diligence and absence of prejudice to the other side.

9.2 Considering the question of prejudice likely to be caused to the other party, learned Senior Counsel appearing for the respondent has placed reliance on the judgment of the Hon'ble Supreme Court in ***Pioneer Builders (supra)***, to contend that the requirement of notice under Section 115 of the Act can be waived. The said judgment was rendered in the context of Section 80 of the CPC. However, the language of Section 80 of the CPC and Section 115 of the Act is not identical so as to extend the same interpretation to the latter provision. In the absence of any express provision permitting waiver in the circumstances contemplated under Section 115 of the Act, such an inference cannot be drawn, as it would amount to rewriting the statutory provision, which is impermissible.

9.3 As held by the Bombay High Court in ***Saraswat Co-operative Bank Ltd. & Anr. v. Mulani Associates***[4], the transaction in question cannot be held to be one covered under Section 115 of the Act. The Bombay High Court, in the said judgment, has held that every activity or incident, whether implied or incidental to the core business of the Society, cannot be held to attract Section 115 of the Act. For Section 115 to be attracted, the issue involved in the suit must necessarily relate directly to the constitution, management or business of the Society. In the present case, it is not even pleaded that the sale of properties by public auction constitutes the business of the petitioner-Society.

9.4 The Commercial Court, under the impugned order, proceeded to hold that non-compliance with Section 115 of the Act is a pure question of law and, therefore, need not necessarily be pleaded. The Commercial Court rightly held that, when the petitioner is a Multi-State Co-operative Bank to which the provisions of Section 115 of the Act are applicable, the bar against institution of a suit was well within the knowledge of the petitioner and the omission to raise such a plea cannot be

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[4] ***2026 SCC OnLine Bom 7462***

attributed to mere oversight. Such omission or oversight cannot be accepted, particularly when the proposed amendment would prejudice the rights of the other party and is sought at a belated stage without demonstrating bona fides.

10. In the light of the above reasons, this Court finds that the impugned order does not suffer from any error or infirmity warranting interference. The impugned order is well-reasoned and is in consonance with the settled principles of law. The present petition is devoid of merit.

11. Accordingly, the writ petition stands ***dismissed***.

Sd/-
(K. V. ARAVIND)
JUDGE

VP