HC-KAR

NC: 2026:KHC:59902
WP No. 31126 of 2026

CNR: KAHC010678482026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

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

WRIT PETITION NO. 31126 OF 2026 (GM-CPC)

BETWEEN:

1. PRASAD RAO,
   S/O LATE K. KRISHNAMURTHI RAO,
   AGED 76 YEARS
   R/AT GAYATHRI
   NEAR PETROL PUMP
   FALNIR
   MANGALURU - 575 001.

...PETITIONER

(BY SRI. STEEPHEN MATHEW, ADVOCATE)

AND:

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

1. RAJU GOPAL SHETTY
   S/O. LATE GOPAL DEJU SHETTY,
   AGED 63 YEARS,
   PROPRIETOR
   HOTEL INDRAPRASTHA,
   HOTELS AND RESTAURANTS (FAST FOOD),
   SHANKARA VITTAL EMPORIUM,
   OPP: K.M.C. HOSPITAL,
   N.G. ROAD, ATTAVARA,
   MANGALURU 575001.

2. K. MOHAMMAD ASHRAF,
   S/O. LATE H. BAVA,
   57 YEARS, PROPRIETOR,
   ATTAVAR SUPER BAZAR,
   SHANKARA VITTAL EMPORIUM,

OPP. K.M.C. HOSPITAL, N.G. ROAD,
ATTAVARA,
MANGALURU 575001.

3. MRS. VEENA SUDHAKAR,
W/O. SUDHAKAR,
AGED 61 YEARS,
GURUKRIPA CYBER CENTRE,
XEROX AND STATIONARY SHOP,
SHANKARA VITTAL EMPORIUM,
OPP. K.M.C. HOSPITAL, N. G. ROAD,
ATTAVARA, MANGALURU - 575001.

4. VIVEKANANDA,
S/O. K. SANJEEVA, AGED 41 YEARS,
NEW V CONNECT MOBILES,
MOBILE PHONE SETS REPAIR AND RECHARGE,
SHANKARA VITTAL EMPORIUM,
OPP. K.M.C. HOSPITAL, N.G. ROAD,
ATTAVARA, MANGALURU 575001.

5. P. MURALI,
AGED 61 YEARS
S/O. GOPANNA ACHARYA,
LAXMI GANESH JEWELLERS,
SHANKARA VITTAL EMPORIUM,
OPP. K.M.C. HOSPITAL, N.G. ROAD,
ATTAVARA, MANGALURU 575001.

6. M/S. ATTAVAR MEDICALS,
REPRESENTED BY ITS PARTNER
MRS. MALATHI,
W/O. CHETHAN KUMAR SHETTY,
AGED 39 YEARS,
SHANKARA VITTAL EMPORIUM,
OPP K.M.C. HOSPITAL, N.G. ROAD,
ATTAVARA, MANGALURU - 575001.

7. K. NEELAYYA SHETTY,

S/O. K. NARAYANA SHETTY,
AGED 74 YEARS,
PROPRIETOR M/S. RAJASHREE FRUITS
AND JUICE CENTRE,
SHANKARA VITTAL EMPORIUM,
OPP K.M.C. HOSPITAL,
N.G. ROAD, ATTAVARA,
MANGALURU - 575001.

8. JAGADISH D.R.,
S/O. D. B. RAMAYYA,
AGED 51 YEARS,
PROPRIETOR
NEW BENGALURU IYYANGAR BAKERY,
SHANKARA VITTAL EMPORIUM,
OPP K.M.C. HOSPITAL,
N. G. ROAD, ATTAVARA,
MANGALURU - 575001.

9. SRILATHA JOSHY
W/O SUMANTH,
AGED ABOUT 49 YEARS,
SHARBATH KATTE,
SHANKARA VITTAL EMPORIUM
OPPO, KMC HOSPITAL,
N.G. ROAD, ATTAVARA
MANGALORE 575001.

10. MRS. BHOOMI RAMACHANDRA,
D/O. M. RAMACHANDRA,
AGED 36 YEARS,
R/AT. NO.690, SRI MAHALAXMI,
VENKATESHWARA THEATRE ROAD,
DEVASANDRA, K.R.PURAM,
BENGALURU,
PRESENTLY R/AT. NO.1013,
IVORY TOWERS, N. G. ROAD,
ATTAVARA, MANGALURU - 575001.

11. MOHAMMAD ASIF
S/O A.M. IBRAHIM
AGED 41 YEARS
R/AT A.M. COTTAGE
KAPRIGUDDA, NEW ROAD,
ATTAVAR, MANGALURU 575001.

12. NEMIRAJ SHETTY
S/O CHANDRASHEKHAR SHETTY
H/O BHOOMI RAMACHANDRA
AGED 41 YEARS
SHANKARA VITTAL EMPORIUM
OPP. K. M. C. HOSPITAL, N. G. ROAD
ATTAVARA, MANGALORE.

…RESPONDENTS

(V/O DTD: 28/10/2026 NOTICE TO RESPONDENTS IS DISPENSED WITH)

THIS WP IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO I) TO ISSUE WRIT OF CERTIORARI BY SETTING ASIDE THE ORDER DATED 11.09.2026, PASSED BY THE HONBLE PRINCIPAL CIVIL JUDGE, MANGALURU, DAKSHINA KANNADA IN OS NO. 418/2021 REJECTING THE I.A.NO.20 AND 21 AT ANNEXURE -A. AND TO REOPEN AND RECALL THE CASE FOR THE PURPOSE OF CROSS-EXAMINING PW-1 BY THE PETITIONER/DEFENDANT NO.1 AND ETC,.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

ORAL ORDER

The present petition is filed challenging the order dated 11.09.2026, whereby the application filed under Order XVIII Rule 17 of the Code of Civil Procedure, seeking recall of PW-1 for cross-examination and the application filed under Section 151 seeking to re-open the stage of evidence of PW.1, came to be rejected.

2. Learned counsel appearing for the petitioner submits that the cross-examination could not be conducted either due to the absence of PW-1 on several occasions or due to the ill health of the petitioner's counsel. Learned counsel further submits that, on several occasions, the petitioner's counsel was present and ready to cross-examine PW-1, but PW-1 was not present before the Court. It is submitted that PW-1 was present on only three occasions, on two of which the petitioner's counsel was unwell and an application seeking adjournment was filed on the ground of the counsel's ill health. Learned counsel contends that the ill health of the counsel ought not to deprive the petitioner of the opportunity to cross-examine PW-1.

3. Considered the submissions made by learned counsel for the petitioner and perused the impugned order.

4. The respondents are all aged above 60 years, and the suit is of the year 2021. If notice is issued to the respondents, the proceedings in the suit would necessarily have to be stayed, resulting in hardship and further delay in its disposal. If an opportunity to cross-examine PW-1 is granted to the petitioner, no prejudice would be caused to the other parties. In any event, any prejudice that may be caused to the respondents can be adequately compensated by imposing costs. In that view of the matter, issuance of notice to the respondents is dispensed with.

5. A perusal of the order sheet sufficiently indicates that, on more than three occasions, PW-1 was present before the Court, but an adjournment was sought for cross-examination on the ground of the illness of the petitioner's counsel. It is also to be noted that, on several occasions, PW-1 was absent when the petitioner's counsel was present and ready to cross-examine him. Therefore, the failure to cross-examine PW-1 cannot be attributed entirely to the petitioner. The cross-examination of

PW-1 necessarily depends upon his presence before the Court. The petitioner is aged above 75 years, and the majority of the respondents are also aged above 60 years.

6. Taking a lenient view, this Court is inclined to grant an opportunity to the petitioner to cross-examine PW-1 on a date to be fixed by the Trial Court. The cross-examination shall be completed on the date so fixed, without seeking any adjournment for any reason whatsoever. In the process, the inconvenience caused to PW-1 by requiring his appearance for cross-examination on earlier dates, as well as on the date to be fixed by the Trial Court, warrants adequate compensation.

7. Accordingly the following:

ORDER

i. Writ petition is ***allowed***.

ii. The order dated 11.09.2026 is hereby set aside.

iii. The I.A.Nos.20 and 21 are hereby allowed.

iv. The petitioner is permitted to cross-examine PW1. The Trial Court shall fix the date for cross-examination of PW1 subject to convenience of PW1.

v. On that date, when PW1 is present, the petitioner shall complete cross-examination without seeking further adjournment.

vi. The Trial Court is at liberty to grant another adjournment depending on the circumstances on that date.

vii. The above opportunity is subject to payment of cost of Rs.25,000/- payable to PW1 which shall be paid on or before commencement of cross-examination of PW1 before the Trial Court.

Sd/-
(K. V. ARAVIND)
JUDGE

DDU
List No.: 1 Sl No.: 17