HC-KAR

NC: 2026:KHC:64871
WP No. 35461 of 2026

CNR: KAHC010782172026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF NOVEMBER, 2026

BEFORE

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

WRIT PETITION NO. 35461 OF 2026 (GM-CPC)

BETWEEN:

1. MRS. ASHWINI GOWDA
AGED ABOUT 50 YEARS,
WIFE OF CHENNAKESHAVAMURTHY GOWDA ST,
RESIDING AT,
HOUSING BOARD EXTENSION,
VIDYANAGARA EXTENSION,
KUNIGAL, TUMKUR 572106.

2. MASTER PARINITH S. GOWDA
AGED ABOUT 17 YEARS,
RESIDING AT,
HOUSING BOARD EXTENSION,
VIDYANAGARA EXTENSION,
KUNIGAL, TUMKUR 572106.

3. MASTER DANWIN S. GOWDA
AGED ABOUT 16 YEARS,
RESIDING AT,
HOUSING BOARD EXTENSION,
VIDYANAGARA EXTENSION,
KUNIGAL, TUMKUR - 572106.

...PETITIONERS

(BY SRI. N. S. SRIRAJ GOWDA, ADVOCATE)

Digitally signed by VIJAYA P
Location: High Court of Karnataka

AND:

1. MR. DARSHAN KAMALESH
AGED ABOUT 26 YEARS,
SON OF B. KAMALESH,
RESIDING AT,
NO.26/5, SAHYADRI NILAYA,
CHANDRASHEKARA LAYOUT,
SRIGANDHADAKAVALU,
BENGALURU 560091.

…RESPONDENT

(BY SRI. VENKATESH R. BHAGAT, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SETTING ASIDE THE ORDER DATED 27.10.2026, PASSED ON IA NO.12 OF 2026, IN OS NO.243 OF 2022, PENDING BEFORE THE SENIOR CIVIL JUDGE, KUNIGAL, AND CONSEQUENTLY ALLOW IA NO.12, AND PERMIT THE PETITIONERS TO AMEND THEIR WRITTEN STATEMENT, AS SOUGHT FOR, IN IA NO.12 OF 2026 (ANNEXURE F) 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 assails the order dated 27.10.2026 passed in O.S. No.243/2022 on I.A. No.XII, whereby the application filed under Order VI Rule 17 of the Code of Civil Procedure, seeking amendment of the written statement, came to be rejected.

2. Learned counsel appearing for the petitioners submits that the respondent instituted a suit for specific performance, seeking execution of a sale deed pursuant to the agreement of sale dated 07.12.2021. It is contended that the said agreement was executed in connection with, and as security for, a financial loan transaction.

2.1 It is further submitted that the description of the suit schedule property, being contrary to its present physical features and existence, would substantiate the petitioners' case. Such a plea, it is submitted, was already raised in the written statement.

2.2 It is further contended that the petitioners had made substantial investments towards the construction of the sawmill

and installation of machinery, including two electrical power transformers, and that the proposed amendment is intended to bring these facts on record in clarification of the pleadings already made. The proposed amendment would neither introduce a new cause of action nor alter the nature of the suit.

2.3 It is, therefore, contended that the Trial Court committed an error in rejecting the application without duly appreciating the nature and scope of the amendment sought to be incorporated.

3. *Per contra*, learned counsel appearing for the respondent submits that the application was filed at a belated stage, when the evidence of the defendants was being recorded. It is contended that no sufficient grounds are made out to justify the belated amendment of the written statement.

3.1 It is further submitted that the proposed amendment is neither relevant nor necessary for the adjudication of the suit and that the application has been filed only with an intention to delay the progress of the proceedings.

3.2 It is, therefore, contended that the Trial Court, having regard to the nature of the suit, the defence set up and the nature of the proposed amendment, has rightly rejected the application.

4. Heard the learned counsel for the parties and perused the material on record.

5. The suit is instituted seeking a decree for specific performance, directing execution of a registered sale deed pursuant to the registered agreement of sale dated 07.12.2021. The defence raised by the defendants is that the said agreement was executed as security for a loan transaction availed by the husband of defendant No.1. It is further contended that an amount exceeding Rs.80,00,000/- has been invested in the suit schedule property towards the installation of plant and machinery for establishing a sawmill, besides the installation of two electrical power transformers.

6. The application for amendment has been filed after commencement of the trial. Consequently, the proviso to Order VI Rule 17 of the Code of Civil Procedure is attracted. However,

this Court, in certain circumstances, has considered the permissibility of amendments even where the proviso is attracted and the requirement of due diligence is not satisfied.

7. In this regard, reference may be made to the decision of this Court in ***W.P. No.108512/2025***, dated ***16.12.2025***, in the case of ***Mohammadrafi v. Bandenawaz***, wherein certain illustrative categories of amendments were held to be permissible, notwithstanding the fact that the test of due diligence was not satisfied and the amendment was sought after commencement of the trial. The relevant portion reads as follows:

> *"25. The Court is of the considered view that in the following instances (illustratively and not exhaustively), applications seeking amendment of pleadings can be allowed without the "due diligence test," even if such applications are filed "post-commencement of trial."*
>
> *Applications to:*
>
> *(a) correct typographical errors in the dates of events, documents, etc.;*
>
> *(b) correct property number, extent, location, or discrepancies in the boundary or any other misdescription of the property;*

(c) insert events and developments that have taken place post-filing of the suit and which have a bearing on the final decision;

(d) incorporate a prayer owing to a subsequent event that has taken place during the pendency of the suit, keeping open the question of limitation;

(e) add a few additional facts or furnish better particulars to the facts already pleaded;

(f) add facts in support of the relief already claimed;

(g) seek relief in the alternative, which is in the nature of a lesser relief than the one already claimed. Example: In a suit for declaration of exclusive title and injunction, an application seeking the alternative relief of partition.

(h) Seek additional relief or relief ancillary to the main relief when the relief sought by way of amendment is available based on the pleadings already made."

8. In the light of the above, clause (e) of the illustrative situations referred to supra permits the addition of a few further facts or the furnishing of better particulars in respect of facts already pleaded.

9. In this regard, this Court has perused the averments made in the plaint, the written statement and the proposed amendment. The proposed amendment is in furtherance of the defence already set up by the defendants, namely, that the consideration under the agreement is nowhere commensurate

with the value of the suit schedule property and that the description of the suit schedule property is altogether different from its actual features.

10. The amendment sought is intended to introduce particulars relating to the investment of Rs.80,00,000/- towards the installation of machinery for the sawmill, the licence obtained for carrying on the sawmill business and the installation of two electrical power transformers. The nature of the proposed amendment is, therefore, confined to the addition of further facts and furnishing of better particulars in support of the defence already pleaded. Such an amendment falls within the category of amendments held to be permissible by this Court in ***Mohammadrafi*** (supra).

11. It is a settled position of law that the merits of the proposed amendment cannot be examined while considering an application for amendment of pleadings. It is also well settled that a defendant is entitled to take inconsistent pleas in the written statement, even if such pleas are distinct from or contrary to the averments made in the plaint.

12. Though the Trial Court noticed that the application was filed after commencement of the trial, it proceeded to reject the same on an examination of the merits of the proposed amendment, holding that the nature of the amendment was not sustainable in the suit. Such an exercise amounts to an adjudication on the merits of the defence sought to be introduced, which is impermissible in law, having regard to the principles laid down by the Hon'ble Supreme Court.

13. In view of the fact that the proposed amendment is confined to the addition of further facts and furnishing of better particulars in support of the defence already pleaded, this Court is of the considered view that the petition merits consideration.

14. Accordingly, the following:

ORDER

I. The writ petition is ***allowed***.

II. The impugned order dated 27.10.2026 passed on I.A. No.XII in O.S. No.243/2022 is hereby ***set aside***.

III. I.A. No.XII filed under Order VI Rule 17 of the Code of Civil Procedure is ***allowed***, permitting the proposed amendment to the written statement.

IV. The petitioners shall carry out the amendment to the written statement before the Trial Court on the next date of hearing.

V. In view of the amendment permitted to the written statement, the respondent shall be at liberty to file a rejoinder, if necessary.

VI. Considering that the suit is of the year 2022, the Trial Court is requested to expedite its disposal, avoiding unnecessary adjournments.

Sd/-
(K. V. ARAVIND)
JUDGE

DDU
List No.: 2 Sl No.: 12