HC-KAR

NC: 2026:KHC:54482
WP No. 19826 of 2025

CNR: KAHC010434392025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF SEPTEMBER, 2026

BEFORE

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

WRIT PETITION NO. 19826 OF 2025 (GM-CPC)

BETWEEN:

SMT. P. SUNITHA,
W/O. DR. B. GURAPPA NAIDU,
HINDU, AGED ABOUT 54 YEARS,
R/AT NO.42, 6TH CROSS, 3RD BLOCK,
JAVARAIAH GARDEN, THYAGARAJANAGAR,
BANGALORE - 560 028.
REPRESENTED BY HER GPA HOLDER,
DR. B. GURAPPA NAIDU..

...PETITIONER

(BY SRI. VIVEK REDDY LEARNED SENIOR COUNCEL FOR
SRI. SUBBA REDDY K.N., ADVOCATE)

AND:

1. SMT. S. HARSHINI,
W/O SHRI. D. SUDHAKARA,
AGED ABOUT 47 YEARS,
R/O NO.12, 4TH CROSS,
GANDHINGAR,

BENGALURU - 560 009.

2. SHRI. SRAVANA MURTHY,
S/O. LATE SHRI. JAYPAL,
AGED ABOUT 44 YEARS,
NO.33, IST MAIN, IST CROSS,
ADARSHNAGAR, BENGALURU - 560 075.

3. SHRI. MURTHY N.N.,
W/O LATE SHRI. N. NARASIMHAIAH,
AGED ABOUT 64 YEARS,
NO.498, 5TH MAIN, 5TH CROSS, NFEF LAYOUT,
NAGARABHAVI, BENGALURU - 560 072.

4. SHRI. C. J. GOPINATH NAIDU,
S/O. C.G. JAGANNATH NAIDU,
AGED ABOUT 53 YEARS,
NO.99, BILIGIRI HOUSE,
OPP: BANDE MARAMMA BUS STAND,
NAGARBHAVI, 2ND STAGE,
BENGALURU - 560 072.

5. SHRI. K. YASHWANTH SINGH,
S/O. LATE SHRI. T. KRISHNA SINGH,
AGED ABOUT 50 YEARS,
RESIDING AT, NO. 1219,
1ST MAIN, 1ST CROSS, VIJAY NAGAR,
BENGALURU - 560 040.

6. M/S. HOORNAPRIYA AMBA FUELS,
SY. NO. 27 2/2 OLD SY. NO. 122/1,
PREVIOUSLY SY. NO. 122/2 AND EARLIER,
SY. NO. 122 AND 122/3,
KENGERI VILLAGE, KENGIRI HOBLI,
MYSORE ROAD, BANGALORE SOUTH TALUK,
REPRESENTED BY ITS PARTNER,
MR. M.R. BHAGWAN SINGH.

7. M/S BRINDAVAN ENTERPRISES,
NO. 707, MODI HOSPITAL ROAD,
RAJAJI NAGAR, BANGALORE - 560010.
REPRESENTED BY ITS MANAGING PARTNER,
SRI. M. RAGHAVENDRA.

...RESPONDENTS

(BY SRI. D.L. JAGADEESH, LEARNED SENIOR COUNSEL FOR
SRI. KRISHNA MURTHY V., ADVOCATE FOR R1
VIDE ORDER DATED 30/09/2026 NOTICE TO R2 TO R7
IS DISPENSED WITH)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE ORDER DATED 10.06.2025 ON IA NO. 20 OF THE COMMERCIAL ORIGINAL SUIT NO. 745/2023 PENDING ON THE FILE OF THE LEARNED LXXXVII ADDL CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU IN ALLOWING THE APPLICATION UNDER ORDER VI RULE 17 OF THE CPC VIDE ANNEXURE-A.

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

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

HC-KAR

CNR: KAHC010434392025

ORAL ORDER

This writ petition is filed impugning the order dated 10.06.2025 passed in I.A.No.20 in Commercial O.S.No.745/2023, pending on the file of the LXXXVII Addl. City Civil and Sessions Judge, Commercial Court, Bengaluru (for short, 'Commercial Court'), whereby the application filed under Order VI Rule 17 read with Section 151 of the CPC seeking amendment of the counter-claim came to be allowed.

2. Learned Senior Counsel appearing for the petitioner submits that the petitioner instituted Com.O.S.No.745/2023 against the respondents, seeking a direction to the respondents to quit, deliver, vacate and hand over possession of the suit schedule property, and for payment of arrears of rent, service tax and GST, along with damages.

2.1 Learned Senior Counsel submits that the lease deed was executed in the year 2015 and came to be terminated upon expiry of the lease period in the year 2025. It is submitted that the counter-claim, along with the written statement, came to be filed on 31.10.2023.

2.2 It is further submitted that, with a view to defeat the suit and as a part of the delay tactics, one of the respondents filed an application under Order VII Rule 11 of the CPC, which came to be rejected. Aggrieved by the said order, an unsuccessful writ petition came to be filed, which was dismissed on 04.09.2024 insofar as the said application. It is submitted that thereafter, a Special Leave Petition was filed against the said order, which came to be withdrawn on 13.12.2024.

2.3 It is further submitted that, while the suit was progressing and had reached the stage of recording of the plaintiff's evidence, the application seeking amendment of the counter-claim came to be filed, seeking incorporation of an additional prayer for damages.

2.4 It is submitted that the pleadings sought to be introduced by way of amendment had already been set out in the written statement and the counter-claim, and that no due diligence was exercised in seeking the reliefs now sought to be introduced. It is submitted that the requirement of due diligence has neither been established in the application nor examined by the Commercial Court in the impugned order.

2.5 Learned Senior Counsel submits that, apart from the necessity of the amendment for the effective and comprehensive adjudication of the dispute in the suit, in view of the proviso to Order VI Rule 17 of the CPC, due diligence is required to be established. Mere relevancy of the proposed amendment, by itself, is not sufficient.

2.6 Learned Senior Counsel further submits that, having regard to the purpose and object sought to be achieved by the enactment of the Commercial Courts Act, 2015, which contemplates expeditious adjudication of commercial disputes within the prescribed timelines, the conduct of the respondents in filing the application, as well as the preceding proceedings, are relevant considerations.

2.7 Learned Senior Counsel, in support of the aforesaid submissions, places reliance on the judgments of the Hon'ble Supreme Court in ***Vidyabai and Others v. Padmalatha and Another*** **[(2009) 2 SCC 409]** and ***Basavaraj v. Indira and Others*** **[(2024) 3 SCC 705]**, and the judgment of the Delhi High Court in ***Usha Drager Pvt. Ltd. and Another v.***

Draegerwerk Aktiengesellschaft and Others **[2025 SCC OnLine Del 300]**.

2.8 With the assistance of the aforesaid judgments, it is contended that, unless due diligence is established, an amendment cannot be permitted at any stage of the proceedings.

3. *Per contra*, learned Senior Counsel appearing for the respondents submits that the written statement and counter-claim were filed on 31.10.2023. It is submitted that the amendment was necessitated by subsequent events, namely, the filing of an application for conversion of the suit property from industrial use to commercial use, which constitutes the core dispute in the suit.

3.1 It is submitted that the proposed amendment is only to bring on record the subsequent events and the consequential relief arising therefrom. Since the amendment seeks to bring on record facts relating to subsequent developments, the requirement of due diligence is sufficiently explained.

3.2 It is further submitted that, as the conversion of the suit property for commercial use, as promised by the plaintiff, remained unfulfilled, the respondents pleaded the financial loss and damages caused to them. The prayer for damages is consequential to and founded upon the said pleadings.

3.3 It is submitted that, insofar as the amendment of the pleadings is concerned, the same is sought to bring on record the subsequent events, along with the documents which were not in existence as on the date of filing of the counter-claim. It is submitted that the Commercial Court, having appreciated that the proposed amendment is relevant and necessary for the complete and comprehensive adjudication of the dispute, has rightly permitted the amendment.

3.4 In support of the aforesaid submissions, learned Senior Counsel places reliance on the judgments of the Hon'ble Supreme Court in ***Sampath Kumar v. Ayyakannu and Another*** **[AIR 2002 SC 3369],** ***Revajeetu Builders and Developers v. Narayanaswamy and Sons and Others*** **[(2009) 10 SCC 84],** ***L.C. Hanumanthappa v. H.B. Shivakumar*** **[(2016) 1 SCC 332],** ***Life Insurance***

Corporation of India v. Sanjeev Builders Pvt. Ltd. and Another **[AIR 2022 SC 4256],** ***Rajesh Kumar Aggarwal and Others v. K.K. Modi and Others*** **[AIR 2006 SC 1647],** and ***Baldev Singh and Others v. Manohar Singh and Another*** **[(2006) 6 SCC 498]**.

4. Considered the submissions made by learned Senior Counsels appearing for both the parties and perused the material on record.

5. The petitioner instituted the suit before the Commercial Court seeking a direction to the respondents to quit, deliver, vacate and hand over possession of the suit schedule property, along with other reliefs towards arrears of rent, payment of taxes and damages.

5.1 The respondents filed their counterclaim along with written statement on 31.10.2023. From the counterclaim and written statement, it is evident that the property in question was leased on the assurance that the same would be converted for commercial purposes, though it was then being used for industrial purposes. It is specifically pleaded that, on account of

the failure of the plaintiff to convert the suit schedule property from industrial to commercial use, the premises remained permanently unfit for the purpose for which it was let out. It is further pleaded that, on account of such inaction, the respondents suffered financial loss.

5.2 The prayer in the counter-claim was to declare the registered lease deed dated 09.04.2015 as void and unenforceable and to issue a mandatory injunction directing the plaintiff to execute a fresh registered lease deed in favour of defendant No.1 for a further period of 25 years from 06.01.2023, along with other injunctive reliefs.

5.3 The application filed under Order VI Rule 17 of the CPC sets out the proposed amendments to the pleadings and the additional prayer. The application is supported by an affidavit. The affidavit states that an application for conversion was filed before the Deputy Commissioner on 03.04.2024, seeking change of land use from industrial to commercial, and that the said fact came to light only when defendant No.6 filed an application under the RTI Act seeking information.

5.4 It is further stated that, in view of the information furnished under the RTI Act, the proposed amendment is necessary to bring the subsequent events on record. It is also stated that the application dated 03.04.2024 would establish that the suit property continued to retain its industrial land-use status.

5.5 Learned Senior Counsel appearing for the respondents contends that, as the proposed amendment is intended to bring the subsequent events on record, the requirement of due diligence contemplated under the proviso stands sufficiently explained. On a reading of the contents of the affidavit accompanying the application, the submission appears to be justifiable.

5.6 However, when the proposed amendments are compared with the counter-claim already filed, it is evident that the respondents have categorically pleaded the failure of the petitioner to convert the suit schedule property from industrial use to commercial use. It is further pleaded that, due to such failure, the scheduled property remained unfit for the purpose for which it was let out. It is also pleaded that, on account of

such inaction in effecting the conversion, the respondents suffered injury and financial loss.

5.7 The aforesaid pleadings are relevant to determine whether the proposed amendment is founded upon any new information which was not within the possession or knowledge of the respondents at the time of filing the counterclaim and written statement. The answer, in the considered view of this Court, is in the negative. The factum of the failure to effect conversion and the resultant financial loss were within the knowledge of the respondents and had already been specifically pleaded in the counter-claim and written statement.

5.8 At the most, the subsequent development is the availability of documents supporting such claim, which is the subject matter of I.A.No.21, allowed by an order passed on the same day.

6. On a perusal of the judgments cited by both sides, it is evident that, when an amendment to the pleadings is sought, the same is to be considered liberally and, if any prejudice is likely to be caused to the other party, such prejudice can be

compensated. It is also held that, if the amendment is necessary for the effective and comprehensive adjudication of the dispute, the same may be permitted at any stage of the proceedings.

6.1 However, such consideration cannot be dehors the proviso to Order VI Rule 17 of the CPC, particularly in the context of proceedings before the Commercial Court governed by the Commercial Courts Act, 2015. The liberal approach in permitting amendments to pleadings is subject to compliance with the requirement of due diligence contemplated under the proviso to Order VI Rule 17.

6.2 In view of the settled position of law, as observed by the Hon'ble Supreme Court in ***Basavaraj*** *(supra)*, the burden is on the party seeking amendment after commencement of the trial to establish that, despite exercising due diligence, the amendment could not have been sought earlier. It is further held that, though amendments are ordinarily permitted to avoid multiplicity of litigation, the Court is required to consider whether the application for amendment is *bona fide* or *mala fide*, and whether the proposed amendment would cause such

prejudice to the other side as cannot be adequately compensated in terms of money.

6.3 The Hon'ble Supreme Court has observed that satisfaction of the requirement under the proviso to Order VI Rule 17 of the CPC is a pre-condition for entertaining an application for amendment after commencement of the trial. If the application and the affidavit filed in support of the proposed amendment are examined, there is no pleading to the effect that the amendment sought to be introduced could not have been raised, despite exercise of due diligence, at the time of filing the written statement and counter-claim.

6.4 However, by clever drafting, an attempt is made to demonstrate that the proposed amendment is necessitated by subsequent information received during the pendency of the suit. On a close perusal of the pleadings in the counter-claim, such an attempt necessarily fails. When the respondents were aware of the non-conversion of the property for commercial use, for which purpose it was leased, and had specifically pleaded the financial loss suffered on account of the failure of the plaintiff/petitioner to effect such conversion, there was

nothing preventing the respondents from seeking the consequential relief, namely, a prayer for damages.

6.5 Above all, the manner in which the proceedings have progressed before the Commercial Court, having regard to the purpose and object underlying the establishment of Commercial Courts under the Commercial Courts Act, 2015, also requires consideration and emphasis.

6.5.1 After filing of the counter-claim, an application under Order VII Rule 11 of the CPC was filed seeking rejection of the plaint. The said attempt remained unsuccessful before the Commercial Court, before this Court, as well as before the Hon'ble Supreme Court. It is only thereafter that the cause of action, claimed to have arisen from a subsequent development, has been sought to be introduced on the basis of the information furnished by the competent authority under the RTI Act in response to an application made by defendant No.6.

6.5.2 The pleadings before the Court, *prima facie*, suggest that the lease deed was executed for a specified period and that the respondents declined to vacate the premises upon expiry of the

lease period. When the suit seeking eviction was instituted, the same came to be resisted by the respondents.

6.6 Having regard to the object and purpose underlying the establishment of Commercial Courts under the Commercial Courts Act, 2015, which seeks to facilitate economic growth, enhance the international image of the Indian justice delivery system, and ensure speedy disposal of commercial disputes, the amendment sought at this stage would necessarily result in further delay in the adjudication of the suit. Such delay would prejudice the rights of the plaintiff/petitioner.

7. The judgments relied upon by learned Senior Counsel for the respondents in ***Sampath Kumar*** *(supra)*, ***Revajeetu Builders and Developers*** *(supra)*, and ***L.C. Hanumanthappa*** *(supra)*, are not applicable to the facts of the present case, as the interpretation of the proviso to Order VI Rule 17 of the CPC was not the subject matter for consideration in those cases.

7.1 Insofar as the judgment of the Hon'ble Supreme Court in ***Life Insurance Corporation of India*** *(supra)* is concerned, though the Hon'ble Supreme Court has held that an application

for amendment is to be considered liberally, such consideration is subject to the Court satisfying itself as to whether the prayer for amendment is *mala fide* or whether it would affect the valid defence of the other party. In the light of the observations made hereinabove with regard to the conduct of the respondents in prosecuting the suit, the attempt made by way of the proposed amendment cannot, undoubtedly, be said to be *bona fide*.

7.2 Insofar as the judgment of the Hon'ble Supreme Court in ***Baldev Singh and Others*** *(supra)* is concerned, the said judgment did not deal with the interpretation of the proviso to Order VI Rule 17, except with regard to the stage at which it can be said that the trial has commenced.

8. In the light of the above, this Court is of the view that the Commercial Court committed an error in permitting the amendment to the counter-claim without there being any pleading or material establishing that the amendment could not have been sought despite exercise of due diligence at the time of filing the counter-claim. The Commercial Court has also failed to record any finding with regard to the requirement of

due diligence, which is mandatory for entertaining and permitting an amendment after commencement of the trial.

9. Accordingly, the order passed by the Commercial Court cannot be sustained. In the light of the above, the following:

ORDER

i. The writ petition is ***allowed***.

ii. The order dated 10.06.2025 in application in I.A.No.20 of the Commercial O.S.No.745/2023 pending on the file of LXXXVII Addl. City Civil and Sessions Judge, Commercial Court, Bengaluru stands rejected.

iii. I.A.No.20 filed under Order VI Rule 17 is dismissed.

Sd/-
(K. V. ARAVIND)
JUDGE

DDU
List No.: 1 Sl No.: 0