

KABC010051162024



**IN THE COURT OF THE I ADDITIONAL CITY CIVIL &
SESSIONS JUDGE (CCH – 02) AT BENGALURU**

PRESENT : **Sri. B.P. DEVAMANE, LL.M.,**
I Addl. City Civil & Sessions Judge,
Bengaluru City.

Dated this the 25th day of June 2026

O.S. No.1453 / 2024

PLAINTIFFS : **1. M/s. Srinivasa Trust,**
A Trust registered under the Indian Trust
Act, 1881,
having its Principal Office at 7/21, 1st
Cross, 9th Main, RMV Extension,
Bengaluru-560 080.

Rep. by its Trustee and Authorised
Signatory Sri.D.A.Srinivas.

2. Smt. Kalpaja Dalavoi,
Aged about 57 years,
Trustee of M/s.Srinivasa Trust,
No.87, Sai Keshav, Opposite Sai
Gardens, Seegahalli,
Bengaluru-560 067.

(By **Sri. Shravan Madhav K.P., Adv.**)

- VS -

DEFENDANTS

- : 1. D.A. Thejeshwari,**
Aged about 57 years,
W/o K.M. Srinivasa Murthy,
R/at No.5/25, 10th Main, 13th Cross,
Jayanagara, 1st Block,
BENGALURU – 560 066.
- 2. Smt. Ekta Kukreja,**
Director of Anushka Constructions Pvt.
Ltd.,
D/o late Sri. Nanda Kumar Bashomal
Menda,
Aged about 48 years,
R/at Flat 21B, Kingfisher Towers,
Kasturba Road Cross,
BENGALURU – 560 001.
- 3. M/s. Anushka Construction Pvt. Ltd.,**
A Company incorporated under the
Companies Act, 1956
having its registered office at No.100/1,
City Center, Opp. Town Hall, J.C. Road,
BENGALURU – 560 002.
Rep. by its Director,
Sri. Avnash Amarlal.
- (D1 by Sri. B.K. Narendra Babu;
D2 & D3 by Sri. P.S. Gurumurthy,
Advocates.)**

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ORDER ON I.A. No.29

Advocate for plaintiffs filed this IA under Order 6 Rule 17 r/w
Section 151 CPC with prayer to permit plaintiffs to amend the plaint
in prayer column as under:

“ In the alternative, grant a judgment, order or decree directing defendant No.1 to return the advance sale consideration of Rs.70.00 crore along with interest @ 15% p.a.”

2. In the affidavit supporting the IA, plaintiff No.2 stated that Plaintiffs have filed this suit for specific performance of sale agreement dated 13.03.2023 and for declaration that the sale deed dated 13.03.2024 executed by defendant No.1 in favour of defendant Nos.2 & 3 is null & void and not binding on plaintiffs. Evidence of both parties is concluded and the case is posted for arguments. Proposed amendment is seeking alternative relief of refund of earnest money which has been paid by plaintiffs Trust under sale agreement to defendant No.1. Question of granting alternative relief would arise only in the event preliminary relief of specific performance is denied. Section 22 of Specific Relief Act permits plaintiffs in a suit for specific performance to seek alternative relief of refund of earnest money at any stage of proceedings. In spite of due diligence, plaintiffs Trust could not have raised the matter before commencement of trial. Proposed amendment is necessary to adjudicate upon alternative relief for determination and complete adjudication. If the amendment is allowed, plaintiffs undertake that they would not lead any further evidence. If the IA is allowed, no prejudice would be caused to other side; on the contrary, plaintiffs would be put to irreparable loss & injury. Hence, prayed to allow the IA.

3. Advocate for defendant No.1 filed objection to the IA contending that this IA has been filed at belated stage with *mala fide* intention to patch up the collapsing case after the entire evidence of both parties has been concluded and the matter is set down for

arguments. It violates mandate of Order 6 Rule 17 of CPC. Plaintiffs have failed to show as to why this alternative prayer could not have been pleaded at the time of filing the suit or before commencement of trial. Claim of refund of earnest money is barred by limitation. Proposed amendment introduces inconsistent & mutually destructive pleadings. If Ex.P1 is valid sale agreement, then plaintiffs cannot turn around and claim for refund of earnest money. If the proposed amendment is allowed, it would change the nature of suit i.e., from specific performance to money suit. The proposed amendment is afterthought. Defendant No.1 has already offered to repay loan of Rs.70.00 crore. If the proposed amendment is allowed, defendant No.1 will be forced to face hybrid decree. Hence, prayed to reject the IA. Advocate for defendant No.2 and 3 submitted, no objection to the I.A.

4. Heard arguments. Perused the material on record.

5. Now the points that arise for my consideration are : -

1. Whether IA No.29 filed by plaintiffs under Order 6 Rule 17 r/w Section 151 CPC deserves to be allowed ?
2. What Order ?

6. My answers to the above points are as under : -

Point No.1 : In the **Affirmative**

Point No.2 : As per final order,
for the following : -

REASONS

7. **POINT No.1** : Plaintiffs filed this suit for specific performance of agreement of sale dated 13.03.2023. Thereafter, plaintiffs got amended the plaint by inserting prayer of declaration that registered sale deed dated 13.03.2024 executed by defendant No.1 in favour of defendant Nos.2 & 3 is null & void. It is the contention of defendant No.1 that agreement of sale dated 13.03.2023 is executed towards security of loan of Rs.70.00 crore availed by defendant No.1.

8. Advocate for plaintiffs relied upon the ruling of **The Hon'ble Apex Court** reported in **2025 SCC OnLine 1014** (*K.R. Suresh v. R. Poornima & Ors.*), wherein it has been held thus :

58. It is thus a settled position of law that the plaint may be amended at any stage of the proceedings to enable the plaintiff to seek an alternative relief, including that of refund of earnest money, and the courts have been vested with wide judicial discretion to permit such amendments. However, under [Section 22](#) of the 1963 Act, the courts cannot grant such relief suo moto, since the inclusion of the prayer clause remains a sine qua non for the grant of such a relief. In other words, when an "appropriate case" exists for seeking the said relief under this provision, it must be specifically sought either in the original plaint or by way of an amendment. This has been emphatically held by this Court in [Desh Raj v. Rohtash Singh](#), reported in (2023) 3 SCC 714. The relevant observations are reproduced hereunder:

"35. On a plain reading of the above-reproduced provision, we have no reason to doubt that the plaintiff in his suit for specific performance of a contract is not only entitled to seek specific performance of the contract for the transfer of immovable property but he can also seek alternative relief(s) including the refund of any earnest money, provided that such a relief has been specifically incorporated in the plaint. The court, however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternative relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at

the time of filing of the suit or by way of amendment, no such relief can be granted to him. The prayer clause is a sine qua non for grant of decree of refund of earnest money.

36. Applying these principles to the facts of the case in hand, we find that the respondent has neither prayed for the relief of refund of earnest money in the original plaint nor he sought any amendment at a subsequent stage. In the absence of such a prayer, it is difficult to accept that the courts would suo motu grant the refund of earnest money irrespective of the fact as to whether Section 22(2) of the SRA Act is to be construed directory or mandatory in nature.” (Emphasis supplied)

Though in view of Order 6 Rule 17 of CPC party should seek amendment at the earliest stage of proceedings i.e., before commencement of trial, but if the Court comes to the conclusion that in spite of due diligence party could not have raised the matter before commencement of trial, it can be allowed. Advocate for plaintiffs fairly submitted that if the proposed amendment is allowed, Plaintiffs will not lead any further evidence as there is direction from The Hon'ble High Court of Karnataka to dispose the matter within the time frame and evidence already led covers the proposed amendment. There is no complete bar in allowing the amendment after commencement of trial. If the Court comes to the conclusion that for proper adjudication of the matter the proposed amendment is necessary, it can be allowed at any stage of proceedings. Looking to the facts & circumstances of the case, the Court is of the considered opinion that proposed amendment is necessary to decide the case effectively. Accordingly, **Point No.1** is answered in the **Affirmative**.

9. **POINT No.2** : In view of the above, I proceed to pass the following : -

ORDER

I.A. No.29 filed by plaintiffs under Order
6 Rule 17 r/w Section 151 of CPC is allowed.

*Dictated to Senior Sheristedar (now under instructions to continue the work as Stenographer Grade I), transcribed & computerized by him, revised, corrected by me and then pronounced in the open Court on this the **25th day of June 2026.***

(B.P. DEVAMANE)
I Addl. City Civil And
Sessions Judge (CCH-02),
Bengaluru City.