

ORDERS ON I.A.No.1

I.A.No.1 is filed by the defendant Under Order 14, Rule 5 r/w Sec.151 of CPC prays to frame the additional issue, in the ends of justice and equity.

Additional Issue:

1. Whether the defendant, as legal heir of Late Mr.A.S.Kamat are liable to discharge the debt if any, of Late Mr.A.S.Kamat, even after the extinguishment of the estates of Late Mr.A.S.Kamat?

2. In support of the application defendant has sworn an affidavit stating that the plaintiff has filed the above suit seeking repayment of a sum of Rs.5,35,000/- along

with interest at 15% per annum. The plaint is filed under the premise that the plaintiff had paid an amount of Rs. 5,35,000/- to Late Mr.A.S Kamat i.e., the father of the defendant and this amount is allegedly required to be returned with interest to the plaintiff. In para 6 and 7 of the Written Statement filed by the defendant herein, it is contended that there is no estate left of Mr.A.S. Kamat which can be liquidated and to derive any valuable consideration for repayment purposes. It is further contended that the Defendants are no more liable towards the Plaintiff after exhaustion of the estates of Late Mr.A.S.Kamat. This Court has framed the issues on 19.07.2025. Based on the averments made in para 6 and 7 of the Written Statement, there is no issue framed by this Court. The issue mentioned above is relevant and necessary for the complete and proper adjudication of the matter. Moreover, the defendant's contention in para 6 and 7 has to be substantiated through evidence and if the above issue is not framed, the defendant would be unable to elucidate the true facts of the matter. Moreover, this Court would be

constrained to pass a judgment without addressing the above-mentioned issue, which would cause great prejudice and hardship to the defendant. Per contra, no hardship would be caused to the plaintiff if the above mentioned issue is framed. Hence prayed to allow the application.

3. The plaintiff filed objections to the above application contending that the application is malicious vexatious without any bonafide. Just to drag on the matter and to harass, the plaintiff this application is filed with all in fact the suit is for false facts and documents recovery of the amount due at the initial stage as the application is not accompanied by the affidavit of the party and only a memorandum of facts is filed by one of the advocate, and in such an application to show the bonafide defendants should have filed an affidavit. The application is not an adjournment application or an advancement application or for extension of temporary injunction. The plaintiff himself had paid certain interest and that the entire business and properties are taken over by the

defendant and that even though the father had taken deposit, the same was for the business and as the defendant has taken over the business and is sunning the same the defendant debt continues and the defendant cannot take a stand that he is liable to the debt only to the extent of the estate left by the father. The memorandum of fact claims on Hearsay evidence which is not permissible, all the averments are hereby false and are hereby denied. At the stage of evidence this application is filed. In fact during the evidence or at a later stage if this Court comes to a conclusion to form or change a issue the same can be done. This application is filed to delay the suit. Therefore, prayed to dismiss the application.

4. Heard and perused the records.

5. The only point that arises for my consideration is:-

“Whether the defendant has made out a ground to allow this application?”

6. My finding to the above point is in the **Affirmative**, for the following:-

REASONS

7. This application is filed by the defendant Under Order 14, Rule 5 r/w Sec.151 of CPC prays to frame the additional issue as mentioned in I.A., in the ends of justice and equity.

8. In para No.5 of the written statement the defendant has taken the plea that:-

The estates of Late Mr. A S Kamat were not enjoyed by the Defendant, rather all the estates of Late Mr. A S Kamat were disposed by the Defendant and his family solely for the purpose of clearing Mr. A S Kamat's debts. It is trite law that the extent of obligation towards clearing debts of one's father is limited to the extent of the estates of that father. In the present case, there are no more estates of Late Mr. A S Kamat that the Defendant has any opportunity to enjoy. Hence, any liability towards the debts of Defendant's father stood discharged when the estates were disposed and sale proceeds thereof were utilized solely

for the purpose of clearing the debts of his father.

And the same is denied by the plaintiff. Therefore, as contemplated under Order 14 Rule 5 of CPC, issues can be altered at any stage before passing Judgment. By allowing this application no injury or hardship would be caused to other side. Hence, I proceed to pass the following:-

ORDER

I.A.No.1 filed by the defendant under Order 14 Rule 5 r/w Sec.151 of CPC is hereby allowed.

Additional issues framed.

Call on for plaintiff evidence and list of witness by 23.02.2026.

(Nisharani A.C.)
III A.C.C. & S.J., Bengaluru.