

KABC170000652022



**IN THE COURT OF LXXXVI ADDL. CITY CIVIL & SESSIONS  
JUDGE, COMMERCIAL COURT, BENGALURU (CCH-87)**

**Dated on this the 17<sup>th</sup> day of September, 2025**

**Present: Sri. Jithendranath C.S., B.A., LL.M.,  
LXXXVI Addl. City Civil & Sessions Judge,  
Bengaluru.**

**COM.O.S.No.945/2021**

**BETWEEN:**

**PLAINTIFF : Mr.K.A. Mohammad Ali,**  
*(By Sri.Achappa P B, Advocate)*

**-Vs -**

**DEFENDANT : Mrs. Asha. L @ Asha Chetan Kumar,**  
*(By Sri.A.G.S., Advocate)*

**In I.A.No.15**

under Order XIV Rule 5 and read with Section 151 of CPC.

**Between:**

**Applicant : Mrs. Asha. L @ Asha Chetan Kumar,**  
*(By Sri.A.G.S., Advocate)*

**AND**

**OPPONENT : Mr.K.A. Mohammad Ali,**  
*(By Sri.Achappa P B, Advocate)*

**Orders on IA.No.15**

Plaintiff Mr.K.A.Mohammad Ali and his power of attorney holder - Smt.Komal S.P have allegedly sold their 'Unisex

Saloon' named after 'Purple Tree' to the defendant Smt.Asha.L @ Asha Chetan Kumar for a consideration of Rs.56,00,000/-.

The parties have allegedly entered into an 'agreement for sale of stock in trade, furniture effects' dated 03.08.2018. The defendant on different occasions paid a sum of Rs.27,00,000/-. According to the plaintiff in ordered to pay the remaining sale consideration of Rs.29,00,000/-, the defendant had issued two cheques for Rs.10,00,000/- each and another cheque for Rs.9,00,000/-. The cheques for Rs.10,00,000/- and Rs.9,00,000/- became dishonoured and the plaintiff initiated criminal prosecution u/Sec.138 of NI Act. Based on the another cheque for Rs.10,00,000/- the plaintiff has filed the present suit for recovery of sale Rs.10,00,000/-, interest thereon and also the cost of the legal notice, in all Rs.16,10,500/- along with future interest at the rate of 18% p.a.

**2.** The defendant Smt.Asha Chetan Kumar has filed written statement admitting that she had entered into an agreement through which she had agreed to pay Rs.56,00,000/-, out of which she had paid Rs.27,00,000/-. She, however, denied her liability to pay the suit claim for the

reason that the plaintiff had no alienable titles over the property sold.

**3.** In the present case the parties have filed their respective pleadings and the court has also framed the issues. When the matter was posted for cross examination of PW.1, the advocate for defendant filed IA No.15 under Order XIV Rule 5 of CPC seeking rectification of the typographical errors occurred in issues No.2 & 4. Defendant also proposed the following 3 addl. issues.

*3. Whether the Plaintiff proves that the defendant had valid and absolute rights to alienating the Purple Tree Saloon or to rename the Saloon?*

*4. Whether the defendant proves that the Plaintiff was running the Saloon business without having valid Trade Licence which is illegal under the law. Therefore, the Agreement for Sale of Stock-in-Trade, Furniture and Effects dated 03.08.2018 is void?*

*5. Whether the defendant proves that the Plaintiff suppressed and entered into the Agreement 03.08.2018 and agreed to transfer lease hold rights without consent of the landlord Mr. S. Naga?*

**4.** The Court has heard both the sides.

5. To recover the remaining part of sale consideration the plaintiff has filed the present suit. In fact, the cheque issued by the defendant favoring the plaintiff for Rs.10.00 lakhs dishonored for the reason payment stopped by the drawer. To recover the said Rs.10.00 lakhs and interest thereon the plaintiff has filed the present suit. Since, the present suit is mainly based upon a negotiable instrument, the burden is upon the plaintiff to prove that in order to recover the legally enforceable debt or other liability the plaintiff has filed the present suit. If the defendant is able to disprove the version of the plaintiff by probabalising that as on the date of suit she had no legally enforceable debt or other liability, the suit would fail. The present suit is neither for specific performance of the sale agreement nor for nullification of the said agreement. Therefore, proof of agreement or disprove of the same is incidental and not substantive. Therefore, the addl. issues No.3, 4 & 5 proposed by the defendant are completely unwarranted to decide the true dispute involved in the present suit. Learned counsel for plaintiff has also proposed an issue that whether unilateral cancellation of the agreement is valid. The said issue also not necessary to decide the present case. The rectification in so far as issues No.2 & 4 as proposed for, is

necessary to cure the typographical errors. Therefore, the court proceed to pass the following:

**ORDER**

IA No.15 filed under Order XIV Rule 5 and read with Section 151 of CPC, is hereby partly allowed.

Issues No.2 & 4 corrected as follows:

**Issue No.2:**

Whether the plaintiff further proves that the cheque dated 01.10.2018 came to be dis honored for the reason payment stopped by the drawer?

**Issue No.4:**

Whether the defendant further proves that the agreement was canceled on 03.10.2018 through an e-mail?

The request of the defendant to frame addl. issues No.3, 4 & 5 are hereby rejected.

[Dictated to the Stenographer, transcribed by her, corrected and signed by me then pronounced in the Open Court, dated this the 17<sup>th</sup> day of September, 2025]

**(JITHENDRANATH C.S.)  
LXXXVI Addl. City Civil & Sessions Judge,  
(Commercial Court), Bengaluru.**