



Before the Commercial Court & Principal District Judge,
Belagavi, At: Belagavi.

Dated this the 6th day of July, 2022

Present:

Sri Muralidhara Pai B., B.Com LL.B.,
Presiding Officer, Commercial Court &
Principal District Judge, Belagavi.

Com. O.S. No. 101/2020

Plaintiff: Smt Seema,
W/o Dinkar Kumar,
Age: 50 years, Occupation: Household,
R/o Presently at C/o Shri Dinkar Kumar-IFS,
CCF Bunglow, Forest Campus,
North High Ground Road,
Palayamkottai, Tirunelveli,
Tamilnadu-627002,
Permanent resident of VPC No.574,
Vijay Nagar, III Cross,
At & Post : Hindalga,
Taluka & District: Belagavi.

(By Shri S.G. Ganachari, Advocate)

Vs.

Defendant: Shri Gangadhar,
S/o Maruti Ghasari,
Age: 53 years, Occupation: Private,
R/o Badas KH, Ghasari Farm,
Taluka & District: Belagavi-591131.

(By Shri A.B. Chougale, Advocate)

PARTIES IN I.A. No. III & IV

Applicant/ Plaintiff : Smt. Seema,
W/o Dinkar Kumar,
Versus

Opponent/ Defendant : Shri Gangadhar,
S/o Maruti Ghasari

COMMON ORDER ON I.A. NOS. III & IV

The Plaintiff has filed I.A. No.III Under Order VI Rule 17 r/w Section 151 of CPC praying for permission to amend the plaint by incorporating para No. 3A as sought in the application.

2) The Plaintiff has filed I.A.No. IV under Order XI Rule 11 (1) (5) of the Commerical Courts Act, 2015 r/w Section 151 of CPC along with list and three documents praying for permission to produce those additional documents in the case.

3) The Defendant has filed separate objection to these applications.

4) Heard learned Counsel for Plaintiff and learned Counsel for Defendant on these applications.

5) The following points would arise for the consideration of this Court:

- (1) Whether the Plaintiff has made out a valid ground to allow these applications?
- (2) What order?

6) The findings of this Court on the above points are as under:

Point No.1	: In the Affirmative
Issue No.2	: As per final order

REASONS

7) Point No.1: The Plaintiff namely Smt. Seema has maintained this suit on 10.12.2020 for recovery of a sum of Rs.35,00,000/- from the Defendant together with interest at the rate of 18% per annum from the date of suit till realisation of entire amount. The Defendant has appeared before the Court on 11.01.2021 and filed his written statement on 05.03.2021. On 21.09.2021 this Court has framed issues in the case. Subsequently i.e., on 15.06.2022 the Plaintiff has maintained the present applications.

8) In I.A.No.III the Plaintiff has sought for permission to amend the plaint by incorporating para No. 3A so as to contend that in his written statement the Defendant has falsely claimed that he has paid a sum of Rs.15,00,000/- to the Plaintiff under two cheques though he had issued a memo dated 02.07.2014 under his signature admitting he having paid those cheques towards repayment of hand loan taken from Smt. Sushma Vasant Khanwilkar, who is deceased sister of the Plaintiff.

9) The Plaintiff has filed I.A.No. IV praying for permission to produce few more documents on the ground that the additional documents sought to be produced before the Court are the documents which are traced and secured recently and that the pen drive contains telephonic conversations of the Defendant referred in her pleadings.

10) The Defendant has opposed these applications on the ground that it is misconceived and untenable and that if these applications are allowed it will cause great injustice and prejudice to him. He has stated that the

Plaintiff has no right to seek amendment of the plaint or to seek permission to produce additional documents after settlement of issues and after filing of the statement of admissions and denials. As such he has contended that these applications are liable to be dismissed.

11) During the course of argument learned Counsel for Defendant has relied on decision in Sudhir Kumar @ S. Baliyan Versus Vinay Kumar G.B (Civil Appeal No. 5620/2021 DD 15.09.2021 before Hon'ble Supreme Court of India). In the said decision Hon'ble Supreme Court of India has held that combined reading of Order XII Rule 1 (4) r/w Order XI Rule 1 (5) it emerges that (i) in case of urgent filings the Plaintiff may seek leave to rely on additional documents; (ii) within 30 days of filing of the suit; (iii) making out a reasonable cause for non-disclosure along with plaint.

12) On the other hand, learned Counsel for Plaintiff has relied on decisions in Varun Pahwa Versus Mrs. Renu Chaudhary [2019 SAR (Civil) 441] and M/s Embassy Classic Private Limited Versus Smt. S.

Hemalatha & another [W.P. No. 50314/2016 (GM-CPC) DD 06.03.2020 of Hon'ble High Court of Karnataka]. In these decisions it is held that amendment in the pleadings cannot be refused merely because of some mistake, negligence, inadvertence or even infraction of rules of procedure.

13) In the case on hand the materials on record indicate that the Plaintiff has maintained I.A.No. III seeking permission to amend the plaint so as to incorporate certain averments in the plaint by way of reply to the contention put forth by the Defendant in his written statement. As such one cannot expect the Plaintiff to plead these aspects in her original plaint. Further, the Plaintiff has categorically stated that recently she could trace the memo dated 02.07.2014 issued by the Defendant, which was misplaced and immediately thereafter she has come up with the present application. The documents sought to be produced by the Plaintiff are no other than the memo dated 02.07.2014, Statement of Account issued by Axis Bank for the period from

01.04.2014 to 31.03.2016 and a pen drive said to be containing telephonic conversations of the Defendant with the husband of the Plaintiff relating to matter in dispute. In the above facts and circumstances of the case this Court holds that the Plaintiff has made out valid grounds to allow her both applications. Hence, Point No.1 is answered in the Affirmative.

14) Point No.2: In the result, this Court proceeds to pass the following:

ORDER

I.A.No. III filed under Order VI Rule 17 r/w Section 151 of CPC is allowed on cost of Rs.2000/-.

I.A.No.IV filed under Order XI Rule 1 (1) (5) of the Commercial Courts Act, 2015 r/w Section 151 of CPC is allowed. No cost.

(Dictated to the Judgment Writer, transcribed and computerized by him, revised by me and after corrections pronounced by me, in Open Court, on this the 6th day of July, 2022)

(Muralidhara Pai B.)
Presiding Officer, Commercial Court
& Principal District Judge, Belagavi.