

**IN THE COURT OF PRL. CIVIL JUDGE &
J.M.F.C. AT BELTHANGADY.**

Present:-
Sri. Sandesha K.,

(Prl. Civil Judge & J.M.F.C., Belthangady)

Dated: 27th Day of April, 2024

ORIGINAL SUIT NO. 339/2019

Plaintiff:

Smt. Reeta D'souza,
W/o Francis D'souza,
Aged about 57 years,
R/at Mundelu House,
Laila Village,
Belthangady Taluk, D.K.

(By: Smt. M.B., Adv.)

:-V/S:-

Defendants:

1. Sri. Francis D'souza,
Aged about 57 years,
S/o Thimothi D' Souza,
R/at Mundelu House,
Laila Village, Belthangady Taluk, D.K.
2. Sri. Prakash.D,
Aged about 46 years,
S/o Late Ananthraja Hegde,
R/at Devuni House,
Balenja Village, Belthangady Taluk, D.K.

(By: Sri. J.K.P., Adv for D1)

(By: Sri. A.N., Adv for D2)

1.	Provision under which application filed.	Under order 6 rule 18 and Section 151 of CPC
2.	Relief sought	Pray for permission to carryout the amendment after condoning delay
3.	The date on which application filed.	06.01.2024

4.	Number of application	IA No.VI
5.	The date of which the objection filed by the respondent /defendant	25.01.2024
6.	The date on which the order were passed on the said application	27.04.2024

**ORDER ON IA No. VI FILED BY THE PLAINTIFF
UNDER ORDER 6 RULE 18 AND SEC 151 OF CODE
OF CIVIL PROCEDURE**

The Plaintiff has filed this suit for the relief of permanent prohibitory injunction and such other relief against the defendant. At the stage of plaintiff evidence, the learned counsel for the plaintiff has filed this application under order VI rule 18 and sec 151 of CPC pray for permission to carryout the amendment after condoning delay and such other reliefs.

2. In the affidavit filed in support of IA No.VI the plaintiff has sworn to that, he has filed I.A No.III for amendment of plaint. The court was pleased to allow the I.A No.III on 30.1.2023 and permitted to plaintiff to amend the plaint. The above said case was posted from 14.2.2023 to several dates and finally on 1.9.2023 this court was pleased to pass an order to effect that plaintiff is not amended the plaint and furnished the amended plaint and case is posted for plaintiff evidence. The non amendment of plaint is neither intentional nor deliberate. Infact, defendant No.1 is the husband of the plaintiff. After filing I.A No.III defendant No.1 come up with the compromise talk, defendant assured the plaintiff that he will

compromise the dispute, plaintiff is informed his advocate to do not carryout amendment, but defendant No.1 turned up, hence it is absolutely necessary to amendment of plaint. If the application is allowed, no hardship will cause to the defendant, hence this application.

3. The defendant No.2 has filed objection to the I.A No.VI filed by the plaintiff and contended that, the application is filed by the plaintiff is not maintainable either in law or in fact. I.A No. II filed by the plaintiff to amend the plaint on 30.1.2023, above application was allowed by this court and permit the plaintiff to amend the plaint on 14.2.2023, but from 14.2.2023 to 1.9.2023 the plaintiff is not made any attempt to amend the plaint, finally on 1.9.2023 this court was pleased to take amendment as nil and posted for evidence of the plaintiff and the stipulated time is fixed by this court to amend the plaint i.e., 14 days, but after lapse of 6 months the application filed. Plaintiff has not explained about the delay to amend the plaint, hence pray for dismiss the application with cost.

4. For disposal of IA No.VI, the following points arise for consideration:

Points

i). Whether the plaintiff has made out good and sufficient grounds for permitting him to amend the plaint ?

ii). What order ?.

5. Both sides have argued in par with their pleadings. On perusal of the records having heard the arguments.

6. My findings to the above Points are as under.

Point No.1 : In the “**Negative**”

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

REASONS

7. **Point No.1:-** 1) Before proceed to highlight the reasons for decision of this court, this court may have note the law on the subject and the legal principles emerging therefrom since settled by the Hon’ble apex court and also Hon’ble High Courts in similar cases and then to apply the same to the present case, in order to decide the present IA.

Law : Civil Procedure Code

2. The procedure for amendment of pleadings is as per order VI Rule 18 of the Code of Civil Procedure. It reads thus:

“18. Failure to amend after order:- If the party who has obtained an order for relief to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited than within 15 days from the date of the order, he shall not be permitted to amend the after the expiration of such limited time as aforesaid or of such 14 days, as the case may be unless the time is extended by the court.”

8. Ld. counsel for the plaintiff argued before this court that, due to some unavoidable circumstances the plaintiff is not carried out the amendment and not furnished amended plaint within time. Non amendment of the plaint is neither intentional nor deliberate. The 1st defendant give a proposal for compromise the suit, therefore plaintiff is not carriedout the amendment intime. If the application is allowed, no hardship and injury caused to the defendants, hence pray for allow the application. Ld. Counsel for the defendant No.2 argued before this court that, the plaintiff has filed I.A No. III U/o 6 rule 17 and sec 151 of CPC for amendment of plaint. Said application is allowed on 30.1.2023, but plaintiff is failed to carry out the amendment and not furnished the amended plaint. Finally on 1.9.2023, this court was pleased to take the amendment is nil and posted for plaintiff evidence. After expiry of 6 months, plaintiff has filed present application without any reason, hence pray for dismiss the application.

9. Have a heard the arguments on behalf of the both parties and carefully perused the record. It is settle position of law that amendment can be carry out within 14 days from the date of order. In the instant case in hand, amendment application was allowed on 30.1.2023 and case is posted for amendment and amended plaint, inspite of sufficient opportunity plaintiff has not carry out the necessary amendment in the plaint and also not furnished amended plaint. Hence on 1.9.2023 this court has ordered that necessary amendment was not carried

out in time and amendment plaint is not filed. Upon verify the order sheet, the plaintiff has not carried out the necessary amendment by taking 8 months time. After that he has filed present application. It is already stated that settled position of law that plaintiff shall not be permitted to amend after the expiration of such limited time unless the time is extended by the court. The Hon'ble High Court of Karnataka in ILR 1977(1) KAR 670 held that, when an amendment order by the court is not carried out within the time prescribed under order 6 rule 18 or within such extended time as the court may be granted all that can be said is that the party who obtained such amendment he is not entitled to the benefit of such amendment. Therefore the application filed by the plaintiff is not tenable and also plaintiff is not entitled benefit of the amendment. Accordingly, the Point No.1 raised above for consideration is answered in the **Negative**.

10. Point No.2: Accordingly in the light of above discussion, this court proceed to pass the following:

ORDER

*The IA No. VI, filed by the Plaintiff
under order VI rule 18 and section 151
of CPC is hereby rejected.*

No order to cost.

(Dictated to the stenographer, typed by him corrected and signed by me and then pronounced in the Open Court on this 27th day of April 2024)

*(Sandesha.K)
Prl. Civil Judge & JMFC.,
Belthangady.*