

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND J.M.F.C
SEDAM**

PRESENT: SRI. VIJAYKUMAR. S. JATLA

Senior Civil Judge & JMFC, Sedam
B.Sc., LL.B.

DATED THIS THE 13th DAY OF JULY-2022.

O.S.No.62/2018

Plaintiff : M/s.Dalmia and others.

Versus

Defendants : Kalyanappa and others

**Order on I.A.No-7 U/o 6 Rule 17 R/w Sec.151 of CPC filed by
defendants**

This is an interlocutory application filed by the defendants seeking permission to amend the written statement as per proposed amendment.

2. The proposed amendment is that ;

1. *"After para No.5 of written statement para No.5(a) may be added:
5(a): It is submitted that the alleged supplementary agreement for sale dated 4.6.2014 is not duly stamped and unregistered one, therefore, the plaintiff company is making the fraud in paying the stamp duty, therefore the plaintiff company is liable to pay the stamp duty and penalty before tendering the document"*

3. Advocate for defendants contended that the plaintiff company has filed a false suit for specific performance of contract against the defendants for grab the suit property, the defendants are appeared through their counsel and filed the written statement and Hon'ble court

was pleased to frame the issues and now the case is posted for cross of plaintiff and the case is at initial stage. The defendants are appeared through counsel and filed written statement by previous counsel, but para No.5 of plaint specifically not denied by the defendants in their written statement of para No.5, the plaintiff company is shown the unregistered supplementary agreement for sale dated 4.6.2014 and it is an written on hundred rupees stamp paper for the amount of Rs.18,95,000/-. The stamp duty paid by the plaintiff Company is Rs.100/- which is not sufficient for the above said amount, therefore, the plaintiff company is liable to pay the duty and penalty to the court before tendering the document. The proposed amendment is not specifically pleaded by previous counsel in the written statement, to decide the matter once for all, the amendment is very necessary to the defendants, the amendment of written statement will not change the nature of case and no harm to the plaintiff, if the Hon'ble court has not given opportunity, heavy and irreparable loss caused to the defendants. The suit property is regarding immovable property. If the court has not given opportunity to amend the written statement, the rights of defendants are forfeited by high influenced company. Hence, sought for allowing IA No.7.

4. The advocate for the plaintiff has filed objection contending that the application filed by the defendants is not maintainable in the eye of law. The plaintiff company has paid sufficiently required stamp duty as per the provisions of Karnataka Stamp Act. After verifying the stamp

duty etc sub-Registrar has accepted the document and registered the document. Stamp duty is sufficient on supplementary agreement for sale. The reasons shown in IA are not correct and insufficient. The above case is posted for cross-examination of PW.1 and at this belated stage, the defendants only to drag on the matter one or the other reasons. Hence, sought for rejection of application.

5. On the basis of the above pleadings and on hearing of both side, the following points arise for my consideration.

- 1) Whether the defendants have made out grounds to allow I.A.No.7 U/o 6 Rule 17 R/w Sec.151 of CPC ?
- 2) What order?

6. My findings on 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:- The case of the defendants and plaintiff is as discussed above. This is a suit for specific performance of contract in respect of suit property against the defendants. This application is filed by the defendants for proposed amendment of written statement as per proposed amendment when the case is posted for Cross of PW.1. Advocate for defendant contended in para No.5 of the written statement that the plaintiff company is shown the unregistered supplementary agreement for sale dated 4.6.2014 and it is written on

hundred rupees stamp paper for the amount of Rs.18,95,000/-. The stamp duty paid by the plaintiff Company is Rs.100/- which is not sufficient for the above said amount, therefore the plaintiff company is liable to pay the duty and penalty to the court before tendering the document. The proposed amendment is not specifically pleaded by previous counsel in the written statement, the decide the matter once for all, the amendment is very necessary to the defendants and the amendment of the written statement will not change the nature of the case. Hence sought for allowing the application. The advocate for plaintiff has filed objections contending that the plaintiff company has paid sufficiently required stamp duty as per the provisions of Karnataka Stamp Act, after verify the stamp duty etc sub-Registrar has accepted the document and registered the document. The stamp duty paid is sufficient on supplementary agreement for sale. Hence, sought for rejection of the application.

8. On perusal of the IA No.7 and plaint and written statement, it is seen that the plaintiff filed suit for specific performance of contract against the defendants in respect of suit property. It is the burden on plaintiff and defendants to prove the case in hand through necessary pleadings and evidence. The proposed amendment will not change the nature of case and it is essential for proper adjudication of dispute. If the amendment is not allowed the defendants are deprived of put forth their case properly by necessary amendment and it leads to

multiplicity of the proceedings. For effective adjudication dispute the proposed amendment in written statement is very much essential. Hence, the defendants made out the valid and justifiable grounds to allow I.A No.7 U/o 6 Rule 17 R/w Sec.151 of CPC. In the light of above reasons I answer **Point No.1 in the Affirmative.**

9. Point No.2:- As I have answered point No. 1 in the Affirmative for the foregoing reasons, I proceed to pass the following:

ORDER

IA-7 Under order 6 Rule 17 R/w Sec.151 of
CPC filed by the defendants is hereby allowed.

Further defendants are directed to amend
the written statement as per proposed
amendment.

(Dictated to the Stenographer directly on computer and corrected then pronounced by me, in the open Court on this the **13th day of July-2022**, at Sedam)

(Vijaykumar S.Jatla)
Senior Civil Judge & JMFC,
Sedam.