

KAMD720003352017

IN THE COURT OF THE PRL. CIVIL JUDGE AND JMFC AT
SRIRANGAPATNA.

Dated this 27th day of August, 2024

Present : Sri. HARISH KUMAR. M, B.Com. LLB.
Prl. Civil Judge and JMFC, Srirangapatna.

OS No. 151/2017

Plaintiff:

Sri. Rateesh B. G.,
S/o Gundappa j.
Age: 45 years,
R/o Baburayanakoppalu Village,
Chamundeshwari Weigh bridge,
Kirangur Circle, Kasaba Hobli,
Srirangapatna Taluk.

(By Sri. M. N. N., Advocate)

-Vs.-

Defendants:

1. Smt. Padma,
W/o Late. Narayana T.
Age: 45 years,
2. Sri. Vinoda N.
S/o Late. Narayana T.
Age: 27 years,
3. Thejaswini N.
D/o Late. Narayana T.
Age: 24 years,
All are R/o Door No.818,
10th cross,
Mahadeshwara Layout,



Adjacent to Vijayanagara,
2nd stage, Mysuru City.

(By Sri. H. C. R., Advocate)

ORDER ON IA No. 6

Applicants / Defendants:

Smt. Padma,
W/o Late. Narayana T.
Age: 45 years,
R/o Door No.818,
10th cross,
Mahadeshwara Layout,
Adjacent to Vijayanagara,
2nd stage, Mysuru City.

And others.....

-Vs.-

Opponents /Plaintiff:

Sri. Rateesh B. G.,
S/o Gundappa j.
Age: 45 years,
R/o Baburayanakoppalu Village,
Chamundeshwari Weigh bridge,
Kirangur Circle, Kasaba Hobli,
Srirangapatna Taluk.

1	Provision under which the application is filed	Under Order XIV Rule 5 read with Section 151 of CPC.
2	Relief sought for	Seeking to frame additional issues.
3	The date on which the application is filed	15.07.2023.
4	Number of the application	06
5	The date on which the objections are filed by different opponents	10.08.2023.



6	The date on which the orders were passed on the said application	27.08.2024.
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ORDER ON INTERLOCUTORY APPLICATION No. 6 UNDER ORDER XIV RULES 5 READ WITH SECTION 151 OF CODE OF CIVIL PROCEDURE FILED BY THE DEFENDANT No.1.

1. The Plaintiff herein filed the suit for recovery of money against the defendants and such other reliefs.
2. When the matter has been posted for plaintiff evidence, the defendant No.1 has filed I.A No.6 under Order XIV Rule 5 of CPC seeking to frame additional issues as hereunder:
 1. **Whether the defendant prove that suit is not maintainable as contended in para 3(a) of the written statement'?**
 2. **Whether the defendants prove that the plaintiff has got created the signature of Late. T. Narayana with an intention to make illegal profit”?**
3. The IA No. 6 supported by the affidavit sworn by the defendant No.1 and it is stated in the affidavit that the above suit has been filed against the defendants for the relief of recovery of money based on the alleged cheque set to have been executed by husband of the defendant No.1 and father of the defendant No.2 and 3. It is further stated that the husband of the defendant No.1 by name T. Narayana was a retired from Southern railway and he was died on 02.10.2016 and defendants are his only legal heirs. It is



further stated that the in para No.13(a) relaying upon the old cheque produced by the plaintiff before the court and the said cheque cancelled by the Bank and this is the important point to be considered by the Hon'ble Court the burden of the proving of the facts. The framing of the additional issues mentioned in the application is absolutely necessary to determine the matters in controversy between the parties, the proposed issue is absolutely necessary, otherwise it will leads to complications, it is just and proper to pass orders as prayed in the application otherwise it will be put to much hardship and great injustice. On these grounds the plaintiffs herein prays to allow the IA No. 6.

4. On the other hand the plaintiff herein filed his statement objections to IA No. 6, contending that the IA No. 6 is not maintainable either in law or on facts and it is liable to be dismissed and the affidavit of IA No. 6 is false and frivolous. The plaintiff further stated that issues were already framed by this Court. Hence, framing of additional issues are not necessary to resolve the dispute between the parties. Hence the application is not maintainable. On these grounds the plaintiff herein prays to dismiss the IA No. 6.
5. Heard argument by both the sides, perused materials available on record.



6. The points that, arise for consideration of this Court are as follows.

1. Whether defendant No.1 has made out grounds to allow the IA No. 6?

2. What order?

7. Findings of this Court on these points are as follows:

Point No. 1 : In the Partly affirmative.

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

REASONS

8. **Point No.1:-** It is a matter of record that the plaintiff herein filed this suit for the relief of recovery of money against the defendants and such other reliefs based on the fact that, one Sri. Narayana T who is husband of defendant No. 1 and father of defendant No. 2 and 3 has borrowed money of Rs. 5,00,000/- (Rupees Five Lakhs only) and he failed to repay the same and he has issued a cheque for discharge of liability, the said cheque was dishonoured, in the mean time he had died, hence the plaintiff herein filed this suit against his legal heirs.

9. On the other hand the defendants herein denied the entire plaint averments and denied the execution of the said cheque and prays dismiss the suit. Based on the pleadings



and documents, this Court has framed issues. Thereafter the matter has been posted for plaintiff evidence. In the mean time the defendant No. 1 herein filed IA No. 6 seeking to frame addition issues as prayed in the IA No. 6.

10. The defendant No. 1 herein stated that, the husband of the defendant No.1 by name T. Narayana was a retired from Southern railway and he was died on 02.10.2016 and defendants are his only legal heirs. It is further stated that the in para No.13(a) relaying upon the old cheque produced by the plaintiff before the court and the said cheque cancelled by the Bank and this is the important point to be considered by the Hon'ble Court the burden of the proving of the facts. The framing of the additional issues mentioned in the application is absolutely necessary to determine the matters in controversy between the parties, the proposed issue is absolutely necessary, otherwise it will leads to complications, it is just and proper to pass orders as prayed in the application otherwise it will be put to much hardship and great injustice. On these grounds the plaintiffs herein prays to allow the IA No. 6.
11. On the other hand the plaintiff herein filed his statement objections to IA No. 6, contending that the IA No. 6 is not maintainable either in law or on facts and it is liable to be dismissed and the affidavit of IA No. 6 is false and frivolous. The plaintiff further stated that issues were already framed



by this Court. Hence, framing of additional issues are not necessary to resolve the dispute between the parties. On these grounds the plaintiff herein prays to dismiss the IA No. 6.

12. Both the counsels have addressed arguments and reiterated the facts mentioned in the pleadings.
13. At this stage it is relevant to note that, issues arise when a material proposition of fact of law is affirmed by one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence. Each material proposition affirmed by one party and denied by the other shall form the subject-matter of a distinct issue.
14. The Issues are the back bone of a suit. The framing of issues, therefore has a very important bearing on the trial and decision of a case. Firstly it is the framed and not the pleadings that guide the parties in the matter of leading evidence. secondly, the court cannot refuse to decide the point on which an issue has been framed and evidence led by the parties, even if the point involved is not mentioned in the pleadings. Thirdly, the court should not frame an issue which does not arise in the pleadings. Fourthly, the issues



must be confined to the material questions of fact or law and not on subordinate facts or evidence by which material questions of fact or law are proved or disproved. Fifthly, one issue should cover only one fact or law in dispute between the parties. Finally, if the case goes in appeal, it must be dealt with by the appellate court on the issues settled for trial. After the amendment in the code in 1976, all issues should normally be tried at the suit and decided at one and the same time. It is, therefore, essential to the right decision of a case that appropriate issues should be framed.

15. It is to be noted that, on careful reading of the averments of the plaint, it discloses that, the plaintiffs herein averred that, the husband of defendant No. 1 has issued a cheque for discharge of liability, on the other hand the defendant No. 1 contended that her husband has not issued any cheque and it is concocted by the plaintiff. This Court has already framed issue No. 1, but the defendants herein contended that the signature in the cheque was created by the plaintiff. Under such circumstances it is necessary to frame the addition issue in this regard, further the framing of addition issue No. 1 as prayed in the IA no. 6 involved in the issue No. 3, if the plaintiff is not entitle for any relief obviously the suit may be dismissed. Hence the framing of said issue is not necessary.



16. Based on the above observation this court is of the opinion that in the instant case the defendant No. 1 has not made out grounds to partly allow the IA No. 6 and hence this court answers this point in the partly affirmative.
17. **Point No. 2** : For the aforesaid discussions as mentioned in the point No. 1, this court proceed to pass the following order :

ORDER

Interlocutory Application No.6 filed by the defendant no. 1 Under Order XIV Rule 5 read with Section 151 of Code of Civil Procedure is hereby allowed.

Accordingly the additional issue No. 1 is framed as hereunder:

Additional Issue No. 1: Whether the defendants prove that, the plaintiff has created the signature of Late. T. Narayana in the alleged cheque with an intention to make illegal gain?

No order as to costs.

(Typed by me directly on the laptop, transcript is corrected and initialled by me and then pronounced by me in the open Court on this 27th day of August, 2024)

**Prl. Civil Judge & JMFC
Srirangapatna.**

ORDER ON IA No. 6

O. S. No. 151/2017



ORDER ON IA No. 6

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