

ORDERS ON I.A.NO.12

This is the application filed by the applicant/ defendant No.7 under order 6 rule 17 r/w sec.151 of C.P.C seeking an amendment of written statement as mentioned in the application.

2. In the affidavit annexed to the application the applicant/defendant No.7 submitted that he intended to insert certain relevant facts which were earlier not been pleaded in his written statement. The proposed amendment is vital and to prolific which goes to the root of the matter. As such it is necessary to amend his written statement. Hence, prays to allow the application.

3. On the other hand, the plaintiff filed objection on IA and

contended that the defendant No.7 filed this application only to drag on the proceedings. Hence, prays to dismiss the application.

4. Considering the contentions of the respective parties, the following point arises for my consideration:

1. Whether the proposed amendment is necessary for the purpose of determining the real questions in controversy between the parties?

5. Having heard the arguments of both the counsels and considering the entire materials available on record, I answer the above point in the '**Negative**' for the following;

R E A S O N S

6. The suit of the plaintiff is for specific performance of

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contract. Said suit come to be decreed by this court on 08.09.2011. Aggrieved by the order of this court the plaintiff filed appeal before the Hon'ble III ADJ, Mysuru in RFA No.640/2011. The Hon'ble III ADJ, Mysuru remanded the matter to reconsider afresh after providing an opportunity to the plaintiff to adduce further evidence. There after this court by giving an opportunity to the plaintiff to lead his further evidence has decreed the suit on 14.02.2013. Record reveals that the suit has been restored by setting aside the judgment and decree passed by this court vide order dated 08.02.2019. Ever since the evidence of plaintiff side is not been concluded. The defendant No. 3 has filed his written statement on 21.02.2019 there after amended his written statement on 21.12.2019. Now

when the case is posted for cross examination of Pw1 the defendant No. 7 come up with this application stated that the proposed amendment is material one which goes to the root of the matter.

The proposed amendment sought by defendant No. 7 is reproduced here as it is " *After paragraph No. 26 to add another paragraph under reference No. 27. It is fervently submitted by the defendants that the suit under challenge is perse otiose and perfidy. Entire case put forth by the plaintiff is based on foundational fiction and fabrication to core as well as brim. Right from the inception plaintiff has traded rank and palpable falsity besides the alleged materials relied are byproduct of fabrication and concoction. Same are apparent on the face of the record buttress by graffiti comprising write up in bold letters. Conduct of plaintiff is tainted with blemish. Adding insult to injury, approach of plaintiff towards the alleged subject matter of original suit under challenge ensuing relief of*

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specific performance of alleged contract is murky, opaque, smudge and nebulous. Suit under challenge is a classic example of ocean of manipulation. Malafides on the part of the plaintiff is written on the wall. Same are anathema to the established principles of law, public order and public policy. Suit under challenge is nothing but orchestration against innocent and gullible defendants. On the said count also suit of the plaintiff is liable rejected stock and situation".

7. It is to be noted that as per Order 6 rule 17 of CPC the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

8. On going through the aforesaid proposed amendment, this court has not been found any

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material fact which is necessary to determine the real question in controversy between the parties. The suit is one for the specific performance of contract. In a suit for specific performance of contract the real question is to be determined with regarding the brevity of contract between the parties. As such the defendant No. 7 come up with this application without any sufficient ground as to how the proposed amendment is a material fact which is necessary to determine the real question in controversy between the parties. Suit is one for the year 2006. The evidence of both parties yet to be commenced. As stated by the plaintiff in its objection that the defendant No. 7 filed this application only to drag on the proceedings holds water. Thus the defendant No. 7 has not made out

ground to allow the application. As such no prejudice will cause to the defendant No. 7 if application is dismissed. Thus for all these reasons I.A. is liable to be dismissed.

9. Hence, I answer the above point in the Negative and proceed to pass the following;

O R D E R

I.A. No.12 filed by the applicant/defendant No.7 Under Order 6 rule 17 r/w Sec.151 of C.P.C. is hereby dismissed on cost of Rs.1,000/-.

Sd/-

JUDGE,

Addl. Court of Small Causes,
Mysuru.