

**:ORDER IN IA.No.VII:**

|                                                                   |                                                                            |
|-------------------------------------------------------------------|----------------------------------------------------------------------------|
| Provision under which the application is filed                    | Under Section 22(2) of the Specific Relief Act R/w Order VI Rule 17 of CPC |
| Relief sought for                                                 | <b>Amendment of prayer column</b>                                          |
| The date on which the application is filed                        | 20-09-2025                                                                 |
| Number of the application                                         | IA NO.VII                                                                  |
| The date on which the objections are filed by different opponents | 10-11-2025                                                                 |
| date on which the orders passed on the said application           | 07-03-2026                                                                 |

The present application is filed seeking amendment of prayer column (d) before the words of 'Grant any other relief or relief/s as the hon'ble Court deems fit and proper with cost with the ends of justice' as under ;

"In the alternate, by directing the defendant to refund the earnest advance money of Rs.5,00,000/- together with interest at 2% per month from 26-02-2014, i.e., the date of the registered agreement to sale until payment".

The plaintiff filed his affidavit in support of the IA stating by allowing the present application no loss or hardship

shall be caused to the other side, on the contrary he shall be put to great loss and hardship if the application is not allowed.

2. It is objected by the defendant by filing affidavit sworn to state as under ;

The plaintiff herein has filed the above application, and has sought the relief of amendment of his plaint and trying to insert the prayer column No.(d), which is not at all maintainable neither in law or on given facts. Based upon this ground alone, the above application deserves to be rejected in the interest of Justice.

The affidavit filed by the plaintiff in support of annexed application are all blatant lie., and has not shown any proper reasons in his affidavit, that, for what reason the amendment is required at this belated stage, as such the same is liable to be dismiss with heavy costs.

The proposed amendment sought in the annexed application is not at all required, as the said matter is pending since 2017 before this Court, based upon the registered agreement of sale without possession as per Ex P-1 dated 26.02.2014., and the above suit has been initiated on 18.02.2017.

The above said matter once already decided infavour of plaintiff on 01.08.2017 and same has been challenged before the honble 2<sup>nd</sup> Additional District and Sessions Judge in R.A. No. 63/2018 and the said court was pleased to set aside the Judgment and decree dated 01.08.2017 and remand back to this Court for fresh adjudication.

The above suit initiated on 18.02.2017., for the decree for specific performance of agreement which was entered into by and between the plaintiff and defendant on 01.08.2017. The relief of refund of money was available on the date of filing the suit itself., but no such relief was claimed.

Now the plaintiff has approached with the above I.A, after expiry of ONE DECADE, with the above amendment application, which was filed by the plaintiff on 20.09.2025., seeking refund of earnest money with interest, which is not at all maintainable and deserves to be rejected in the interest of Justice. The said fact had been decided by hon'ble Patna High Court in Bhagavati Prasad Jalana //VS// Smt. Premalata Devi Kedia and others. A copy is enclosed for kind perusal of this Court.

Prior to filing the above suit, the plaintiff has issued two demand legal notice as per Ex P-2 & P-5. The said Ex P-2 and P-5 do not speak single word with regard to the alleged demand or direction to refund the earnest advance money of Rs. 5,00,000/- together with interest at 2% per month from 26.02.2014 i.e. Ex P-1., nor speaking in his pleadings.

The contents of affidavit filed with the annexed application cannot be believed at any moment of time. The plaintiff intentionally filed false affidavit and falsely contended in Para No. 2 of the affidavit that, he is trying to insert the relief (d) as the plaintiff had paid advance amount of Rs.5,00,000/- to me and now demanding the said sum with interest at Rs. 2% p.m., which is illegal. In fact the plaintiff had paid only a sum of Rs.1,30,000/- through cheque no.859455 dated 04-03-2014 drawn on Corporation Bank Raichur Branch. A copy is enclosed herewith for kind perusal of this court.

The plaintiff not disclosed under what manner he had paid the said sum in my favour and without producing the bank statements or copies of cheque issued to me, before this Court.

I pray this Court that kindly give direction to the plaintiff to produce the copies of cheque issued in my name in the year 2014. In the absence of said material thing, the alleged allegation cannot be believed. Based upon this ground alone, the above I.A. deserves to be rejected in the interest of Justice.

The plaintiff intentionally filed false affidavit in Para No. 3 of his affidavit, which cannot be believed. When this Court set on 17.09.2025 to lead further evidence from my side and due to not leading my further evidence, this Court pleased to recorded that, no further evidence on my behalf and closed it and matter is set for submitting arguments on the main from the plaintiff side. Interestingly, the plaintiff has falsely contended that the above matter was set for hearing without disclosing the exact nature of hearing and simply filed the above affidavit with the application. Based upon this ground alone, the above I.A. deserves to be rejected in the interest of Justice.

When the above matter has been set for submitting arguments and plaintiff simply approached with the above I.A., without recalling the stage of arguments. This conduct

itself goes to show that the plaintiff is not diligent to conduct his case before this Court and same is deserves to be rejected in the interest of Justice.

Defendant No. 4 has intentionally misrepresented before this court along with I.A. The very nature of above application are against the pleadings and documents relied with the plaint, as such it is just and necessary to reject the above I.A, in the interest of Justice.

Further, replied to the provisions of O. VI Rule 17 of CPC as under;

The above said provisions are not at all attracted at this belated stage, as now the matter is set for submitting final arguments, the question of considering the amendment is totally beyond the imagination.

The specific provision of Order VI Rule 17 of CPC., is read as follows:

Rule 17: Amendment of pleadings:-- 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. Provided that, no applications for amendment shall be allowed after the trial has commenced, unless the Court comes to conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.

In the instant case on hand, the evidence of the parties already concluded and the matter is set for final arguments, the question of believing the false contention does not arise at all. And not now at this stage, the said approach made by plaintiff with new plea is totally changing the nature of suit, as such it is just and necessary to reject the above application in the interest of Justice.

As per the various Judgments of Honble Apex Court and High Courts, when the nature of suit going to be changed from the amendments, such kind of application/s cannot be entertained.

In the present case on hand the applicant/plaintiff himself never thought about the refund of earnest money and narrating a different plea to add in relief column. If at all the annexed application is allowed, the very nature of suit will

going to be changed, as such it is just and necessary to reject the application in the interest of Justice. Based upon this ground alone, the above application is liable to be rejected in the interest of Justice. I state on oath that, no harm will be caused to the applicant if this application is rejected. On the other hand, if this application is allowed, the matter will be decided after another one decade I will be put to great hardship, injustice, which cannot be compensated in terms of money. Wherefore, this Court may be pleased to reject the above application in the interest of Justice.

**2.** Heard both sides, Sr. Counsel for plaintiff has filed written arguments and furnished reported judgement in the case of Deshraj rendered by the hon'ble Apex Court, reported in 2023 SCC (3) 714. Sr. Counsel for defendant relied on observations made by hon'ble High Court of Patna in the case of Bhagavathi Prasad Jalan V/s Premalatha Devi Kedia and others.

Perused the application, contents of affidavits, written arguments and observations relied on by both sides; on the basis point that would arise for consideration;



**POINT:**

Is IA.No.VII deserve to be allowed?

3. The findings on the points are in the affirmative for the following :

**:REASONS:**

**4. Point :** This suit is for the relief of specific performance of contract. At the stage of arguments on merits the present application is filed seeking the proposed amendment in the prayer column. Objection is filed. It is simply avarred in the IA that the plaintiff is seeking amendment, no specific reason is assigned, which is of the main objections. It is also objected that, the plaintiff invoked both provisions U/Sec.22(2) of the Specific Relief Act and Order 6 Rule 17 of CPC which are different to each other and both require different reasons.

The plaintiff counsel relied on observation made by the hon'ble Apex Court that, "plaintiff in his suit for specific performance of a contract is not only entitled to see specific performance of the contract for the transfer of immovable property but it can also seek alternate relief including the refund of any earnest money, provided that, such a relief has been specifically incorporated in the plaint. The Court,

however, has been vested with wide judicial discretion to permit the plaintiff to amend the plaint even at a later stage of the proceedings and seek the alternate relief of refund of the earnest money. The litmus test appears to be that unless a plaintiff specifically seeks the refund of the earnest money at the time of filing of the suit or by way of amendment, no such relief can be granted to him. Prayer clause is a sine qua non for grant of decree of refund of earnest money”

The defendant counsel relied on observation made by the hon'ble High Court of Patna that, “the relief of refund of money was available to the plaintiff on the date of institution of the suit, but no such relief was claimed. It was only after expiry about five years that an amendment petition was filed seeking alternatively of refund of the earnest money. There cannot be any dispute that the suit for mere refund of the earnest money was not maintainable beyond the period of three years from the date when the earnest money was advanced by the plaintiff to the defendant. The claim for refund of the earnest money became barred by limitation. It is based on the observation made by the hon'ble Apex Court in the case of Munilal V/s The Oriental Fire and General

Insurance Company Limited and another.

The Senior Counsel for plaintiff in his written argument submitted countering the objection by the other side on the invoking of different provisions seeking amendments as Section 22 of the Specific Relief Act is the charging provision and Order 6 Rule 17 of CPC is quoted as R/w only.

The Proviso of Section 22 (2) reads as under;

*PROVIDED that where the plaintiff has not claimed any such relief in the plaint, the court shall, at any stage of the proceedings, allow him to amend plaint on such terms as may be just for including a claim for such relief.*

The Proviso mandates the amendment sought for at any stage. So, though, the stage herein in the case for arguments, it is not barred. The objection regarding provision under the CPC invoked as R/w is not sustainable in consideration of the proviso.

The objection regarding the limitation in seeking the amendment of prayer for the earnest money is though considerable in view of the observation relied on by the defendant is not applicable on the facts and circumstances in the present case as the plaintiff averred about the earnest

money in his pleadings in para 5. So that, as the observation relied on by the plaintiff, which is recent one comparatively with the observation relied on by the defendant, it is inclined to follow the observation relied on by the plaintiff as a precedent herein on the present IA. However, the burden of proof lies on the plaintiff is clear. In view of this the other objections stand untenable under the circumstances. For the lapses by the plaintiff in delay in seeking the amendment or alternate relief in the first pleading without depending upon the proviso U/Sec.22(2) under Specific Relief Act, he is found suitable to be imposed with a suitable cost. Hence the point is answer affirmatively and the following order is passed ;

**:ORDER:**

IA No.VII is allowed with cost of Rs.5,000/-  
For necessary amendment and amended  
plaint and for arguments on merits by 11-03-  
2026.

(Dictated to the Stenographer, transcript and typed by her, script corrected, signed and then pronounced in the open Court by me on this the 07-03-2026).

Sd/-  
**(Sudeen Kumar.D.J)**  
**Addl.Sr.Civil Judge Court & JMFC-I,**  
**Raichur.**