

ORDER ON IA NO.1

Plaintiff has filed I.A.No.1 U/O VI Rule 17 R/W Sec. 151 of CPC seeking the leave of the court to carry out the amendment in the plaint as sought in the application in question.

2. Defendant has filed objection to the said I.A.No.1.

3. Heard the arguments of the learned counsel appearing for the plaintiff and defendants, perused the pleadings and materials placed on the record.

4. The points that arises for consideration is as follows:

(1) Whether the proposed amendment is just and necessary to decide the real dispute in controversy between the parties to the suit?

5. My findings to the above point is in the **Affirmative** for the following:

REASONS

6. Plaintiff has filed the present IA No.1 seeking for the amendment to rectify the errors crept in the plaint in respect of MVC and MFA number in the plaint averments as shown in the application in question. In the affidavit filed in support of the said IA No.1, it is contended that, the said mistakes are neither intentional nor deliberate but due to oversight and it is necessary to rectify the said mistakes crept in the plaint while mentioning the MVC and MFA numbers. Hence, she sought for allowing the application in question.

7. Per contra, in the objection statement, it is contended that, the proposed amendment sought by the plaintiff is at highly belated stage and she is not entitled to carry out the amendment in the application in question. It is further contended that, the plaintiff has entered MVC No.65/2004 in the plaint averments and now she intends to rectify the said MVC. No as 65/2004 instead of 65/2009 and MFA No.20434/12 which is intentional one. She further contended that, no satisfactory grounds are made out to allow the application in question and the question of carrying out amendment does not

arise at all as the plaintiff has filed this application out of greed though she has mentioned the MVC number as 65/2004 in the complaint made by her before the District Bar Association and the Police Inspector, Karwar Town PS and hence, she sought for dismissal of the suit.

8. It is pertinent to state here that, plaintiff has filed this suit for the relief of recovery of money of Rs.2,75,000/- along with interest at the rate of 10% and when the matter is posted for issues the plaintiff has come up with the present application seeking for amendment on the ground that, due to oversight the MVC number was wrongly mentioned as 65/2004 instead of 65/2009 and that the MFA number also wrongly mentioned as 20434/12 instead 20435/12 and sought for inserting the correct number as MVC No.65/2009 and correct MFA No.20435/12 instead of MVC No.65/2004 and MFA No.20434/12. On the perusal of materials available on record, it goes to show that, while mentioning the MVC and MFA Number in the plaint averments it was wrongly mentioned and the same ought to have rectified for the just decision of the case. Further, the said mistake appears to be a bonafide one, which occurred due to oversight.

Moreover, the said application was filed by the plaintiff before the commencement of trial. It is no doubt true that, the plaintiff has filed the present application before commencement of evidence. However, in view of the decision of the **Hon'ble High Court of Karnataka** reported in **ILR 2003 KAR 4814** between **Shiva Rama Upadyaya V/s Raja Satyanarayana Setty**, then Hon'ble High Court of Karnataka laid down the following steps to consider the liberal approach with respect to provision U/O. 6 Rule 17 of CPC which are:-

- (i) the proposed amendment should not result injustice to the other side.
- (ii) any admission made infavour of plaintiff should not be withdrawn.
- (iii) inconsistent and contradictory allegations which negate admitted facts could not be raised.

9. From the above, it is clear that the Hon'ble High Court of Karnataka held that an amendment can be made only if the above said three conditions are not violated. In the present case, the above three conditions will not be violated if the application is allowed. Moreover, the amendment

sought by the plaintiff is limited to an extent of corrections in the MVC and MFA number but not other amendment such as name of the parties etc., That, the defendant No.3 nowhere in her objection, she mentioned that, the said MVC and MFA number does not belongs to the present case. On the other hand, defendant No.3 claimed that, the proposed amendment will effect to the reputation and profession of the defendant No.3. But, she has not explained that how such an amendment will effect to her reputation and profession. However, considering the nature of the suit, relief sought for in the suit, it is just and proper to this court to allow the application in question and that the defendant is entitled to file written statement agitating his claims before the court and also entitled to cross-examine the plaintiff in this regard and to lead evidence to disprove the plaint averments in respect of the proposed amendment. Therefore, the application in question deserves to be allowed and hence, the **Point under consideration is answered in the Affirmative** and proceed to pass the following:

ORDER

I.A.No.1 filed by the plaintiff U/O VI Rule 17 R/w Sec.151 of CPC is hereby allowed as prayed for.

Call on for carrying out amendment and to furnish amended plaint and for objection to IA No.3 and for orders on IA No.2 R/by **07-08-2024**

**Prl.Civil Judge & JMFC-II,
Karwar.**