

### **ORDER ON IA XX**

This interim application is filed by the applicant/plaintiff under Order VI Rule 17 of CPC and sought to introduce the amendment as mentioned below:

1. Insert new paragraphs No.8A and 8B after paragraph No.8 in page No.4 of the plaint, as below;

“8A. That the plaintiff denies that the lawyer’s notice, dated 10.05.2016 issued by the plaintiff was evidently sent claiming enforcement of materially altered agreement, or that the defendants had instructed their Counsel at Udupi to deny the execution of the Agreement for Sale set up in the plaintiff’s lawyer’s notice and to send suitable reply notice, or that the instructions to send the said reply were passed on to their Advocate at Udupi by the defendants from Mumbai over the phone, or that hence, complete instructions could not be provided by the defendants to their Counsel in the matter. Therefore, denying the contents of the notice sent by the plaintiff as false is not correct.

“8B. That the defendants had sent his brother, by name Madhava Poojary, to the office of his Counsel to give instructions to send reply notice to the notice sent by the plaintiff. The said Madhava Poojary is the elder brother of defendant No.2, to whom defendant No.2 had given clear instructions to send the reply notice. The defendants’ earlier Counsel had sent reply notice to the plaintiff under the clear instructions given by the defendants over telephone along with the instructions of their elder brother Madhava Poojary.”

2. The plaintiff has filed affidavit in support of the averments made in the application wherein it is contended that the plaintiff could not add some of the contents of the plaint by oversight. The proposed two paragraphs mentioned in the application are essential for the just decision of the case. Therefore it is prayed to allow the application.

3. The said application is opposed by the defendants/opponents on the ground that the application is not maintainable for the reason that under Order VI Rule 17 of CPC amendment cannot be permitted after commencement of the trial. Rest of the contentions have been denied. Hence

defendants/opponents sought to dismiss the application with costs.

4. Heard the arguments.
5. The points that would arise for my determination are:
  1. Whether the applicant/plaintiff has made out a case to sustain the amendment application as prayed for?
  2. What order?

6. The above point No.1 is answered in the negative and point No.2 for the following:

#### **REASONS**

7. **Point No.1:** This suit is filed by the plaintiff seeking relief of specific performance of contract. Both the parties have led oral as well as documentary evidence and when the case is posted for arguments, the present application is filed. Before advertng to the contentions urged by both the parties, it is just and proper to extract Order VI Rule 17 of CPC which reads as follows:

*“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 by*

*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”*

From the plain reading of the above provision, it is clear that once the trial is commenced, the application under Order VI Rule 17 of CPC cannot be entertained unless the court is of the opinion that amendment could not be introduced at the earliest inspite of due diligence.

8. On perusal of the proposed amendment sought, it appears that the plaintiff/applicant sought to insert certain pleadings with regard to the notice issued by the defendants/opponents. At this juncture, as rightly pointed out by the learned counsel for the defendants/opponents, now after completion of the trial, the applicant/plaintiff cannot explain the circumstances under which the notices have been issued and reply notice was sent by the defendants. Further as rightly pointed out by the learned counsel for the defendants/opponents that the averments made in the application that due to oversight the amendment cannot be introduced is unsustainable for the reason that the defence had already set by the defendants in the written statement. Therefore court is of the opinion that the proposed amendment

is not required for the just and proper decision of the case. Even otherwise considering the merits of the case also while once the trial is commenced amendment is impermissible. Apart from that in this case the trial is completely over and proposed amendment is not necessary to decide the controversy involved in this case. Hence, **I answer point No.1 in the negative and proceed to pass the following:**

**ORDER**

IA XX filed by the applicant/plaintiff under Order VI Rule 17 of CPC is hereby reject with no order as to costs.

Call on for arguments finally by: 03.02.2020

**(Vivekananda S. Pandit)**  
Prl. Senior Civil Judge & CJM, Udupi