

KAUP300007262023



**IN THE COURT OF I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, UDUPI (SITTING AT KUNDAPURA)**

DATED THIS THE 13th DAY OF JANUARY, 2026

PRESENT:

**Sri Abdul Rahim Hussain Shaikh,
B.Sc., B.Ed., LL.B.(Spl.)
I Addl. District and Sessions Judge,
Udupi (sitting at Kundapura)**

Ex.Case No.510/2023

Parties to I.A. No.4:

Applicant/ Decree Holder	The Oriental Insurance Co. Ltd., a company registered under the Companies Act, 1956 and having their registered office and having their one of its Divisional Office at Udupi represented by its Senior Divisional Manager-Sri Gopala Naik D , 51 years, S/o Dobayya Naik, Residing at Udupi. (By Sri/Smt: N.S.R.B., Advocate)
	AND
Opponent	Managing Partner, Supreme Tiles, Sri Jayakara Shetty, Tallur, Kundapura (By Sri/Smt: M.J. Shetty, Advocate)

Parties to Ex. No.510/2023:

Decree Holder	The Oriental Insurance Co. Ltd.
	AND
Judgment Debtor	Managing Partner, Supreme Tiles, Tallur, Kundapura Taluk

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ORDER ON I.A. NO. 4 FILED UNDER ORDER VI RULE 17
R/W SECTION 151 of CPC

The I.A. No. 4 is filed under Order VI Rule 17 of CPC by the applicant/decreed holder seeking amendment of the petition.

2. In the affidavit annexed along with the application contended that the execution petition arised due to judgment of pay and recovery passed in MVC No.88/2017. It is contended in the affidavit that at the time of filing the execution petition, prayer is sought for attachment and sale of movable and immovable properties, but has not prayed for arrest of the accused on failure of satisfaction of the award. It is contended that the Judgment Debtor has prolonged the matter by arising unnecessary objection and if at this stage arrest is sought, the decreetal amount can be recovered. It is further contended that for the speedy recovery of decreetal amount due by Judgment Debtor, it is very much required for amendment of the petition since as prayed in the application. Hence, prayed to allow the application.

3. Per contra, the Judgment Debtor has filed objection contending that the decree holder can recover the alleged decreetal amount by due process of law and amendment sought is not required. It is contended that award in MVC No.88/2017 is challenged in MFA No.3719/2020 and in view of the some objection cannot claim the relief of attachment and

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sale of movable and immovable properties and also arrest order in a single petition and the application is not maintainable. Hence prays to dismiss the application.

4. Heard the arguments of both the counsels.

5. Perused the materials on record, contents of the application, objection. The points that arisen for consideration of this Tribunal:

- 1) Whether the applicant has made out justifiable grounds for allowing the I.A. No. 4?
- 2) What order?

6. The above points are answered for the reasons, findings given in the foregoing paragraphs as:

Point No.1: In the Negative

Point No.2 : as per final order:

REASONS

7. **Point No.1:** In the instant case, there is no dispute as regard to award passed in MVC No.88/2017 against the J.Dr. Further no stay order is granted in M.F.A. No.3719/2020 for taking steps by decree holder to satisfy the decree. The main objection of the Judgment Debtor is that the decree holder cannot seek arrest order in a single petition and as such, the petition is not maintainable. It is very pertinent to note that for effective enforcement of the decree, the decree holder can take

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necessary steps other than the attachment of movables and also seek arrest of the J.Dr. The main point that has to be taken into consideration is that the amendment sought should not introduce new claims effecting the decree of the trial Court. It is equally important to note that the present application filed seeking amendment for arrest of the decree holder in case of not satisfying the decree even after attachment of movables. The decree holder can generally seek the arrest and detention of the J.Dr. by amending an existing execution petition subject to certain condition. As the bar to allow the amendment of execution petition provided they are necessary for determining the real question in controversy and do not introduce a time barred claim. It is also the duty of the Court to be satisfied that the Jr.Dr. having means to pay to refuses or rejects to do or attempting to avoid payment and by considering the said fact, passed an order of amendment sought. It is found that the contention of the Judgment Debtor that separate petition has to be filed and the said existing petition, cannot be amended cannot be taken into consideration for the reason of avoiding multiplicity of litigation and filing of fresh petitions when the existing petition can provide relief to the decree holder. Considering all these aspects, it is found that the applicant/decreed holder has made out grounds to allow the petition. Accordingly, I answer point No.1 in the **Negative**.

8. **Point No.2:** In view of answer of this Tribunal on point No.1, this Tribunal pass the following:-

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ORDER

The I.A. No.4 filed under Order VI Rule 17 r/w Section 151 of CPC, by the applicant/deGREE holder is hereby allowed.

The Decree Holder is permitted to carry out necessary amendment as prayed in the application.

No order as to costs.

(Typed to my dictation by the Stenographer directly on Computer, corrected by me and then pronounced in open Court on this the **13th day of January, 2026**)

(Abdul Rahim Hussain Shaikh)
I Addl. District and Sessions Judge,
Udupi, (sitting at Kundapura)