



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 2679 OF 2026 (GM-CPC)

BETWEEN:

MRS. ABIDA BEGUM,
W/O. SYED HAFEEZ UR REHMAN,
AGED ABOUT 68 YEARS,
RESIDENT OF SHOP NO.1,
GROUND FLOOR AND SECOND FLOOR,
SILVER PLAZA, NO.95/1,
EBRAHIM SAHIB STREET,
BENGALURU – 560 001

...PETITIONER

(BY SRI. BALARAJ A. C., ADVOCATE)

AND:

MR.N. S. MACHENDER,
S/O.LATE.N.SHANKER RAO,
AGED ABOUT 65 YEARS,
RESIDENT OF SILVER PLAZA,
NO.95/1, EBRAHIM SAHIB STREET,
BENGALURU – 560 001

...RESPONDENT

(BY SRI. M. D. RAGHUNATH, ADVOCATE)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI AND QUASH THE IMPUGNED ORDER PASSED ON I.A. NOS. 4 AND 5 FILED FOR GRANT OF PERMISSION TO AMEND THE WRITTEN STATEMENT, BY THE LEARNED LXXXVI ADDL. CITY CIVIL AND SESSIONS JUDGE, COMMERCIAL COURT, BENGALURU IN COM.O.S.NO. 1066 OF 2024 VIDE ANNEXURE-F AND ETC.,

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:





CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

This petition by the defendant in Com.O.S.No.1066/2024 is directed against the impugned order dated 18.12.2025, whereby the applications, I.A.Nos.4 and 5 filed by the petitioner seeking amendment of written statement and to put forth a counter claim were rejected by the trial Court by holding as under:

“Order on IAs.No.4 & 5

Plaintiff filed this suit seeking a judgment and decree of eviction of the defendant from the suit property, recovery of arrears of rents, mesne profits, etc. Having paid her appearance, the defendant Smt.Adiba Banu on 29.11.2024, filed her written statement traversing the plaint averments and requested the court to dismiss the suit with exemplary and compensatory costs. On the basis of the pleadings, on 19.12.2024, this court had framed four issues, casting burden upon the plaintiff to prove termination of tenancy, liability of the defendant to pay the arrears of rents etc. The plaintiff himself examined as PW.1 and marked seven documents and he was also subjected to cross-examination. The defendant, Smt.Adiba Banu, examined her son - Mr.Syed Hafeez-Ur-Rehman, as DW.1 and marked her original Aadhaar card as Ex.D.1. D.W.1 was also subjected to crossexamination. At this juncture, the defendant has filed IA No.4 under Order VI Rule 17 of CPC, proposing



amendment to the written statement. She proposed amendment paragraph No.15, Sub-numbered as Paragraph No.15(a) to 15(h), runs into six pages. She has also proposed a counterclaim for recovery of Rs.20,75,000/-, which she allegedly deposited with the plaintiff towards refundable security deposit along with interest thereon at the rate of 24% per annum.

2. She has also filed IA No.5 under Section 151 of CPC, seeking permission to file application for amendment and for counterclaim.

3. Advocate for plaintiff filed his detailed objections and requested the court to reject the applications.

4. The court has heard both the sides.

5. The points arises for the court's consideration are as under:

1. Whether the proposed amendment is necessary to determine the real controversy in dispute between the parties?

2. Whether the defendant has made out that despite due diligence, she could not able to raise the matter before the commencement of trial?

3. What Order?

6. My answer to the above points are as under:

*Point No.1 : In the **negative**,*

*Point No.2 : In the **negative**,*

*Point No.3 : As per the final order
for the following;*



REASONS

The proposed amendment is as follows:

15(a). That it is further humbly submitted that, as the defendant being tenant of the Schedule A Premises by virtue of a Lease Deed (Rental Agreement) dt:1.8.1998 and which lease was being extended from time to time by the plaintiff without any issues/ problems and on the defendant obtaining the Schedule A premises commenced Textile business in the name of M/s.Suha Collection, being managed and maintained by two of her sons. Thereafter, the defendant with an intention to develop her business and being in need of additional accommodation and on noticing that the first floor of the Schedule A premises being vacant had approached the plaintiff for letting/renting out the same in her favour in the month of September, 2018. However, the plaintiff had let out the first floor premises in Property bearing No.95/1 in favour of a third party tenant. On letting/renting out the first floor premises, the plaintiff offered the defendant for letting second floor premises in the above immoveable property bearing No.95/1 which is described as Schedule B premises in the plaint and which was kept vacant for a long time. The defendant on making inspection of the second floor premises/schedule B premises and on noticing that the said premises is not suitable for her business on account of several partition walls being erected and also the existing structure being substandard one and intimated the plaintiff that, she would take the second floor premises if necessary alternations are made to suit her business is effected and to be let out to her. The defendant also insisted for installing of an elevator/lift for the second floor." (ii) To add after paragraph-15(a) as paragraph-15(b) as under:

"15(b). That it is submitted that, to the said demand of the defendant, the plaintiff informed the defendant by putting forth the following proposals namely, that the plaintiff called upon the defendant to pay a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) as refundable security deposit and monthly rentals to be fixed at Rs.70,000/- per month from the date of occupation of the above premises after renovation. Further, the plaintiff informed the defendant that, out of Rs.20,00,000/- a sum of Rs.6,50,000/- to be paid to her and the remaining security deposit amount of Rs.



13,50,000 (Rupees Thirteen Lakhs and Fifty Thousand Only) to be utilized for installation of lift/elevator and also for undertaking repairs for renovating the schedule B premises suitable for the business purpose of the defendant herein. On the above proposals, the defendant agreed for the said proposal and paid a sum of Rs.6,50,000/- to the plaintiff on 17.9.20218 through chequeNo.869381 drawn on United Bank of India, Shivajinagar, Bengaluru. The above cheque was issued by the son of the defendant and the said cheque was presented and also encashed by the plaintiff on 18.9.2018. Further, it is submitted that the above proposals in the form of an offer and acceptance was also reduced into writing in the form of Memorandum of Understanding between the plaintiff and defendant on 18.9.2018 and the original of the said memorandum of understanding is retained by the plaintiff and unsigned copy of the memorandum of understanding was given to the defendant. The plaintiff postponed to issue either the original or signed copy of memorandum of understanding to the defendant despite several demands made by her from time to time."

(iii) To add after paragraph-15(b) as paragraph-15(c) as under:-

"15(c): That it is submitted that, on payment of Rs.6,50,000/- to the plaintiff by the defendant through her son, the defendant undertook renovation work and initially the defendant conducted negotiations with MERC Elevators, Bengaluru for installation of Lift(elevator) weighing 272kgs or 4 persons. The above said MERC Elevators submitted its invoice along with letter dt:25.9.2018 and agreed to provide lift to the building at the price of Rs.5,40,000/-. On negotiations, the above price was accepted and an advance amount of Rs. 1,50,000/was also paid by the defendant in favour of the above lift providers of lift on 1.10.2018 and the same was being acknowledged. Further, providers of lift on performing preliminary works also received the balance amount of Rs.3,90,000/- from the defendant herein. Simultaneously, the defendant undertook the renovation works in the second floor premises by demolishing the interior walls and re-plastering the walls and laying tiles to the floor, undertaking falls ceiling works and undertaking interior decoration works together with lightings and fittings and all amounted to more Rs. 15,00,000/- apart from the amount paid MERC



Elevators. However, the Lift could not be installed on account seepage of water into the pit from the adjacent properties belonging to the neighbours of the plaintiff herein. The defendant requested the plaintiff to take permission of the adjacent land owners for undertaking repairs to stop seepage of water. But, the plaintiff did not initiate any steps of obtaining permission. Though, the defendant got installed black granites even to the exterior walls of the building by spending additional amounts, the seepage could not be stopped and the provider of the lift, on informing the defendant that the installation of lift is not possible unless the seepage of water is stopped otherwise, there will short circuit of electricity and cause endanger to the human life."

(iv) To add after paragraph-15(c) as paragraph-15(d) as under:-

"15(d). That it is submitted that, as the defendant had spent more than Rs.25,00,000/- towards lift and also for renovating the second floor of the building and the defendant without any alternative commenced her business in the Second Floor premises without the lift for the benefit of her customers. Despite their being hurdles in carrying business in the Second Floor, the defendant was promptly paying the agreed rentals without committing any kind of defaults. During Covid-19 Pandemic time also the defendant had paid the monthly rentals to ground and second floor portions in her occupation."

(v) To add after paragraph-15(d) as Paragraph-15(e) as under:-

15(e). That it is submitted that the defendant has been regular in payment of monthly rentals both in respect of Schedule A and B premises. The defendant has been paying the monthly rentals through cash as per the demand and insistence of the plaintiff and for which the plaintiff was not in the habit of issuing receipts. Though, on several occasions demand was made for issuing receipts but the plaintiff evaded issuing receipts by informing the defendant and her representatives by informing that, she should not worry about it and in view of the long duration of tenancy being in vogue, the defendant had reposed trust on him that, he could not harass the defendant with the plea of non-payment of rentals. At some times, the defendant has paid rentals through cheque and bank transfers. On 3.1.2023, a sum



of Rs.1,13,000/- was paid through cheque No.000655247580 to the plaintiff being rentals for both schedule A and B properties. Likewise on 2.2.2023, a sum of Rs.1,13,000/- was paid through bank cheque No.000655247583, on 30.5.2023, a sum of Rs.50,000/- is paid through cheque No.000655247587, On 22.11.2023 a sum of Rs.1,13,000/- is paid through cheque No.655247590 and 5.12.2024, a sum of Rs.1,13,000/- is paid through cheque No00065524791. For other periods, the rentals were paid in the form of cash. Thus, the claim of the plaintiff that, the defendant is liable to pay a sum of Rs. 16,95,450/- as arrears of rentals is highly bad and illegal. The plaintiff do not specify for which period, the above rentals became due and on issuance of legal notice, the plaintiff had stopped receiving the rentals though the same was offered by the defendant in his favour."

(vi)To add after paragraph-15(e) as paragraph-15(f) as under:-

"15(1). That it is submitted that the plaintiff is liable to refund a sum of Rs.20,00,000/- by way of refundable security deposit in respect of the Schedule B Premises to the defendant herein. The plaintiff with sole intention to avoid repayment of security deposit to the tune of Rs.20,75,000/- has got filed the above suit for eviction. The plaintiff is not in need of the schedule premises for her bonafide use and the plaintiff with sole intention to let out the above schedule premises for higher rentals, he has filed the above suit. Hence, by way of counter claim, the defendant is restricting his claim to Rs.20,75,000/-."

(viii)To add after paragraph-15(f) as paragraph-15(g) as under:-

15(g). Cause of action: The cause of action for the counter claim accrued to the defendant in the first week of September, 2024 when she was informed by her sons about the receipt of court summons along with copies of the plaint and other documents and about filing of the above commercial suit by the plaintiff against her for ejection, recovery of alleged arrears of rentals and also for payment of damages and interest. The defendant was informed about, non mentioning of the security deposit paid by her and her representatives in the form of undertaking renovation of second floor premises and also for erection of lift and other works



and also payment of Rs.6,50,000/- through cheque out of the above refundable security deposit to him by the defendant. Hence, the above counter claim is well within the period of limitation.

(ix) To add after paragraph-15(g) as paragraph-15(h) as under:-

"15(h). The defendant is ready and willing to pay the court fee on the above counter claim and also this Hon'ble Court is possessed with territorial and pecuniary jurisdiction to decide the counter claim raised by the defendant in the above suit. The defendant has not filed any other suit or initiated any other proceedings in respect of counter claim raised in the present proceedings".

PRAYER

WHEREFORE, the defendant respectfully prays that this Hon'ble Court be pleased to pass judgment and decree of the counter claim in favour of the defendant as under:

(i) order for payment by way of recovery a sum of Rs.20,75,000/- payable by the plaintiff in favour of the defendant being refundable security deposit paid by the defendant in respect of plaint schedule A and B Properties;

(ii) order for payment of interest at the rate of 24% per annum on the refundable security deposit payable by the plaintiff to the defendant from the date of filing of the suit till its realization; iii) to award damages as this Hon'ble Court deems fit and allow the counter claim along with costs, in the interest of justice and equity."

And allow the above application, in the interest of justice and equity.

7. The defendant in her affidavit annexed to IA No. 4 & 5, stated that she is an illiterate and parda nashin lady, on



HC-KAR

**NC: 2026:KHC:12296
WP No. 2679 of 2026**

receipt of suit summons, she and her son approached an advocate, in accordance with his advice, the written statement was filed. She stated that her previous advocate expressed his inconvenience in handling the matter and issued No Objection Certificate, the defendant, therefore, engaged another counsel, who advised her to amend her written statement and to make a counterclaim and accordingly, she has filed the present applications. The plaintiff, in his objections interalia contended that the evidence is almost over, when the matter is about to posted for arguments the defendant has filed the present application, if the application is allowed, it leads to denova trial and hence the applications may be rejected.

8. By way of amendment, the defendant is introducing a complete new case which runs into several pages. The evidence is almost over. At this stage, if the present application is allowed, as rightly contended by the advocate for plaintiff, it would lead to a kind of denova situation, because the plaintiff shall be given with an opportunity to file his written statement to the counterclaim and he shall be given an opportunity to lead his further evidence to meet the version of the defendant. As per Order VIII, Rule 6A of CPC, a defendant in a suit may in addition to his right of pleading, a set of under Rule VI, set up, by way of counterclaim against the claim of the plaintiff, any right or claim in respect of a cause of action accrued to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defense or before the time limited for delivering his defence has expired. As per Order



VIII Rule 1 as applicable to the Commercial Courts, the defendant is not permitted to file the written statement after the expiry of 120 days from the date of service of summons. In the present case, the said 120 days is already over. The trial is almost concluded. Therefore, the defendant is not entitled to file her counterclaim. The defendant has not made out that despite due diligence, she could not able to raise the matter before the commencement of the trial. Even without the proposed amendment, this court can effectively answer the issues already framed. Therefore, the amendment application is liable to be rejected, and the court proceeds to pass the following;

9. For the foregoing reasons the court proceed to pass the following;

ORDER

IA.No.4 filed under Order VI Rule 17 R/w Sec.151 of CPC and IA No.5 filed under Section 151 of CPC are hereby rejected."

2. Heard learned counsel for the petitioner and learned counsel for the respondent and perused the material on record.

3. As can be seen from the impugned order, since evidence in the suit had been completed and the matter was posted for arguments, the trial Court was fully justified in rejecting I.A.Nos.4 and 5 in the light of the principles laid down by the Three



Judges Bench judgment of the Apex Court in the case of ***Ashok Kumar Kalra vs. Wing CDR.Surendra Agnihotri and others – (2020) 2 SCC 394.***

4. Under these circumstances, I do not find any merit in the present petition and the same is hereby disposed of without interfering with the impugned order.

5. Liberty is however reserved in favour of the petitioner to take such remedies as available in law including filing a fresh suit, subject to all just exceptions and reserving liberty in favour of the respondents to take up all contentions and defences including defence of limitation.

6. Subject to the aforesaid directions, petition stands disposed of.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE