



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 3RD DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

WRIT PETITION NO.109999 OF 2025 (GM-CPC)

BETWEEN:

SHRI. V. SUNIL KUMAR S/O. V. VANKATESHULU,
AGE. 40 YEARS, OCC. BUSINESS,
R/O. PLOT NO.4, VAIBHAV NILAYA,
VEERANAGOUDA COLONY, ADJACENT BELLARY CLUB,
INFANTRY ROAD, BALLARI-583103.

...PETITIONER

(BY SRI. SADIQALI N.GOODWALA, ADVOCATE)

AND:

1. M/S. OMKAR AGENCIES,
BY ITS PROPRIETOR,
SMT. JAGADISH KULKARNI,
AGE. 52 YEARS, OCC. BUSINESS,
R/O. NO.124, BASAVESHWARNAGAR,
DIST. BALLARI-583103.
2. M/S. VAIBHAVA IRON ORE MINE,
BY ITS PROPRIETOR,
SHRI. V. VENKATESHULU,
AGE. 65 YEARS, OCC. BUSINESS,
R/O. PLOT NO.4, VAIBHAV NILAYA,
VEERANAGOUDA COLONY, ADJACENT BELLARI CLUB,
INFANTRY ROAD, BALLARI-583103.

...RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO (I) A WRIT IN THE NATURE OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 05.06.2025 PASSED BY IV ADDL. DISTRICT AND SESSIONS JUDGE, (COMMERCIAL COURT) BALLARI IN COM O.S.NO.182/2019 ON I.A.NO.16 AND 17 VIDE ANNEXURE-K. (II) ISSUE SUCH OTHER RELIEFS AS THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.





THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING,
THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the orders passed on I.A.No.16 in COM.O.S.No.182/2019 dated 05.06.2025 by the IV Additional District and Sessions Judge (Commercial Court), Ballari, the petitioner/defendant No.2 is before this Court.

2. For the sake of convenience, the parties are referred to as per their rank before the Trial Court.

3. The petitioner is the defendant No.2. He filed I.A.No.16 with a prayer to recall the order of compromise dated 28.02.2023, according to them, which is vitiated by fraud and the suit has to be restored to its original stage. The Trial Court, by order impugned, had dismissed the same by observing that it is needless to state that fraud is to be proved as per Order VI Rule 4 of CPC. Therefore, it is necessary to conduct an inquiry with regard to the alleged fraud purported to be played by the plaintiff in compromising the decreed matter. When the Trial Court insisted for inquiry on I.A.No.16, the learned counsel for



the defendant No.2, on 16.04.2025, had submitted before the Trial court that he will not lead evidence on I.A.No.16. On 28.04.2025, the learned counsel for the plaintiff submitted that he has no evidence to lead on I.A.No.16 as defendant No.2 has not chosen to lead evidence on I.A.No.16. Hence, the Trial Court is handicapped from appreciating the contentions of the defendant No.2 raised on I.A.No.16 without notice. In addendum to this, it is also essential to note that similar application was filed by the defendant i.e. I.A.No.13 under Section 151 of CPC, which came to be rejected on 07.11.2024. The said order also operates as *res judicata* in respect of I.A.No.16. Hence, the Trial Court dismissed the application with costs of ₹5,000/-.

4. Learned counsel appearing for the petitioner/defendant No.2 submits that without instructions to the plaintiff, the advocate had stated before the Trial Court that he has no instructions. As such, the order impugned needs to be set aside.

5. Having heard the learned counsel for the petitioner, perused material on record.



6. When an application is filed seeking to set aside a compromise decree on the ground that the same is obtained by playing fraud, the party, who pleads fraud, has to prove the same by adducing necessary evidence. In this case, the counsel for the defendant No.2, as per the order of the Trial Court, has refused to lead evidence. The submission of the learned counsel that without instructions the advocate has acted cannot be taken into consideration. If the advocate had acted contrary to the instructions of the party, he has a remedy. There is nothing on record to show that he has taken any action against the advocate. Hence, for the sake of argument this Court cannot accept the said submission.

7. The Trial Court has observed that already another application i.e., I.A.No.13 was filed, which came to be rejected on 07.11.2024 and the Trial Court observed that the same will apply as *res-judicata* and dismissed the I.A.No.16 with costs of ₹5,000/-.

8. In the considered opinion of this Court, the Trial Court had rightly imposed costs and dismissed the application as it appears that without leading the evidence, the petitioner wants



the Trial Court to say that it is a decree obtained by fraud. Hence, this Court finds no reason to interfere with the order impugned and accordingly, passing the following:

ORDER

- (i) The writ petition is ***dismissed***.
- (ii) All I.As., in this writ petition stand closed.

Sd/-
JUSTICE LALITHA KANNEGANTI

YAN
CT: UMD
List No.: 1 Sl No.: 19