



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 31ST DAY OF MAY, 2024
BEFORE
THE HON'BLE MR JUSTICE SACHIN SHANKAR MAGADUM
WRIT PETITION NO. 103028 OF 2024 (GM-CPC)

BETWEEN:

1. PRALHAD S/O. RAGHAVENDRA MUNOLI,
AGE: 81 YEARS, OCC: RETD. EMPLOYEE,
2. MISS. SHEELA RAGHAVENDRA
D/O. RAGHAVENDRA MUNOLI,
AGE: 77 YEARS, OCC: HOUSE WIFE,
3. DR. NARAYAN S/O. RAGHAVENDRA MUNOLI,
AGE: 73 YEARS, OCC: MEDICAL EMPLOYEE,
4. RAVINDRA S/O. RAGHAVENDRA MUNOLI,
AGE: 63 YEARS, OCC: RETD. EMPLOYEE,

(ALL ARE R/O. CTS NO.313/B, ROY ROAD,
OPP. LELE GROUND TILAKWADI, BELAGAVI,
TQ: AND DIST: BELAGAVI – 590001)

...PETITIONERS

(BY SRI. DINESH M. KULKARNI, ADVOCATE)

AND:

1. PRAMOD S/O. SHAMRAO BELAGUNDI,
AGE: 51 YEARS, OCC: BUSINESS,
R/O. C/O. RAM K. MUNOLI, "KRISHNENDRA",
H.NO.313/C, ROY ROAD, TILAKWADI,
BELAGAVI, TQ: AND DIST: BELAGAVI – 590001.
2. KIRAN S/O. RAGHAVENDRA MUNOLI,
AGE: 59 YEARS, OCC: SERVICE,
R/O. NO.48, 1ST FLOOR, 1ST STAGE,
3RD MAIN, "GELEYARA BALAGA",
MAHALAXMI LAYOUT, BENGALURU – 86.



3. SMT. LALITA W/O. SHRINIVAS MUNOLI,
AGE: 82 YEARS, OCC: HOUSE WIFE,
R/O. A-303, CHUNNA NOOR BHUVAN,
GUPTA ROAD, VISHNU NAGAR,
DOMBIVALLI-WEST, KALYAN, THANE,
DIST: THANE, STATE MAHARASHTRA-400080.
4. SMT. PADMA W/O. VIJAY JOSHI,
AGE: 58 YEARS, OCC: HOUSE WIFE,
R/O. 37-B, 402 PAM VIYU CO-OPERATIVE SOCIETY,
MAMATA HOSPITAL, SUDHARSHAN NAGAR, MIDC,
DOMBIVALLI-EAST E.R., THANE,
DIST: THANE, STATE MAHARASHTRA-400080.
5. SMT. NANDA W/O. ANIL HANCHINAL,
AGE: 60 YEARS, OCC: HOUSE WIFE,
R/O. NEW RAM BEACH CHS,
NEAR SBI NERUL SECTOR-4,
NAVI MUMBAI, THANE,
MAHARASHTRA-400080.
6. SMT. RUPA W/O. SANJAY NADGIR,
AGE: 53 YEARS, OCC: HOUSE WIFE,
R/O. KAPIL KIRAN SOCIETY,
CHAFEKAR, BANDHU MARG,
MULUND-EAST, MAHARASHTRA-400080.
7. SMT. RAJANI W/O. RAJU BELAGONKAR,
AGE: 51 YEARS, OCC: SERVICE,
R/O. MAHATMA PHULE ROAD,
NEAR HINDUSTAN BANK,
DOMBIVALLI WEST KALYAN,
VISHNUNAGAR, THANE, MAHARASHTRA-400080.

...RESPONDENTS

(BY SRI. SHRIDHAR S. KULKARNI, ADVOCATE FOR C/R1)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE ORDER DATED 19-04-2024 ON I.A.NO.6 IN O.S.NO.444/2023 ON THE FILE OF PRL. CIVIL JUDGE AND JMFC BELAGAVI VIDE ANNEXURE-E, AS NULL AND VOID.



THIS PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The plaintiffs are assailing the order passed by the learned Judge on I.A.No.6 filed under order VI Rule 17 of CPC wherein defendant No.1 is seeking amendment of the written statement.

2. Learned Judge allowed the application and permitted defendant No.1 to incorporate the proposed amendment.

3. Heard the learned counsel for the petitioners, learned counsel for respondent No.1 and perused the order under challenge.

4. Before I advert to examine the reasons assigned by the learned Judge while allowing the application filed in I.A.No.6, it would be appropriate to examine the pleadings in the original written statement and the pleadings in the proposed amendment. Para 14 would be relevant and the same is extracted as under:



"14. The defendant No.1 states that, he has invested the heavy amount and his talent and hard work sincerely to build the good quality building which was and is regularly inspected by the parties and as per their requirement and the demand he has done good quality construction and after their satisfaction they have taken possession of the flats on 01/07/2023 and the plaintiffs have taken the keys of their flats also. Hence the suit filed after the completion of the 90% to 95% work as per development agreement is not maintainable. This defendant most respectfully submit that, the property given to this defendant No.1 under the development agreement was the dilapidated old house and in the present suit the property mentioned is the 5 storied apartment which is subsequently constructed in which the present defendant has 50% share and hence in the present building the present defendant No.1 is the co-owner/ co-sharer as per the registered document acted upon on the property as per the agreement and hence now after the completion of the construction the plaintiffs and defendant No. 2 to 7 can not deny the ownership or share of the defendant No.1 in this false suit and on the false basis can not claim the cancellation of the development agreement and GPA for any reason."

5. In the proposed amendment, the defendants intend to withdraw the pleadings at para 14. Therefore para 19(A) would be relevant, which reads as under.

"19 (A) "The defendant No.1 respectfully submits that, as on the date of the suit the plaintiffs nor defendant Nos.2 to 7 were in possession of any of the flats of apartment constructed by the defendant No.1 and only on the false pleading by mere showing their residential address of



apartment i.e., mere CTS No.313/B, the plaintiffs have successfully misguided and cheated the Court to get the equitable relief in their favour. The defendant No.1 respectfully submits that, on one hand when the plaintiffs claims that, the apartment building is incomplete and unfit for residence and on the other hand they claim that they are in possession and residing therein and these are the false pleadings are sufficient and crystal clear to find out the false case and pleadings of the plaintiffs and on this count also the present suit and interim applications are not maintainable. The plaintiffs are never in actual possession of flats and apartment and there is no single piece of evidence produced before the Court. The defendant No.1 respectfully submits that, the plaintiffs and defendant Nos.2 to 7 have not acquired any right, title and interest in apartment on the basis of the development agreement. The plaintiffs are entitled to take possession of the above said flats after becoming the member of Association of the Residents of flats by paying the membership fees and on complying the statutory provisions of law and proper documentation getting their declaration registered in Sub-Registrar office Belagavi South from the defendant No.1 and after issuance of Possession/Occupancy certificate and No Objection Certificate from defendant No.1 only and till then the plaintiffs and defendant Nos.2 to 7 are not entitled to claim any rights, title and possession of the flats of their share as pleaded in development agreement.”

6. On comparing these two paragraphs, this court would find that defendants have admitted in unequivocal terms at para 14 of the original written statement that possession is handed over to the plaintiffs and the



plaintiffs have taken possession of the flats on 01.07.2023. The pleadings relating to handing over possession by defendants is unequivocal and there is absolutely no ambiguity in the pleadings at para 14, which are culled out supra.

7. Now by way of proposed amendment, dependents clearly intends to withdraw the pleadings relating to handing over possession on the premise that, some sentences are missing and the learned Judge liberally accepts the explanation and permit the defendants to withdraw the pleadings relating to handing over possession of flats to the plaintiffs. This court would also find that apart from reiterating the stand taken by the defendants in the proposed amendment and the objections raised by plaintiffs and citing some judgments, there is absolutely no application of mind. The learned Judge has not adverted to the facts and has not assigned any reasons as to how this amendment application deserves to be allowed.



8. Though it is a trite law that yardstick applicable to amendment of plaint are not applicable to written statement and courts normally take a lenient view while considering amendment of written statements, the said liberal approach cannot be adopted in the present set of facts.

9. Admissions in pleadings are given a higher pedestal in legal proceedings due to their evidentiary value. Such admissions are considered substantive evidence and can significantly impact the outcome of a case. Courts have consistently held that the withdrawal or amendment of admissions in pleadings should only be permitted in exceptional circumstances, where it is necessary to serve the ends of justice. The burden lies on the party seeking the amendment to demonstrate compelling reasons for such a change.

10. Upon careful consideration, it is evident that the defendants' initial admission regarding the delivery of the flats is unequivocal and unambiguous. The plaintiffs have



built their case around this admission, and its withdrawal would fundamentally alter the nature of the dispute. The proposed amendment by the defendants is not merely a clarification of a factual error but constitutes a retraction of a critical admission that has been relied upon by the plaintiffs. The defendants have failed to demonstrate the exceptional circumstances required to justify the withdrawal of their admission. Allowing such an amendment would cause undue prejudice to the plaintiffs and is not warranted in the interests of justice.

11. In light of the foregoing analysis, the trial court's order permitting the defendants to withdraw their admission suffers from significant infirmities. The defendants have not provided sufficient justification for the proposed amendment, and the withdrawal of the admission would unduly prejudice the plaintiffs' case. Therefore, the application for amendment of the written statements to withdraw the admission is denied.



12. The application for amendment of the written statements to withdraw the admission is hereby denied. The defendants shall proceed with their case based on the original written statements. The trial court's order permitting the withdrawal of the admission is set aside.

13. For the forgoing reasons, this court passes the following:

ORDER

The writ petition is allowed.

The order passed on I.A.No.6 is hereby quashed.

No order as to costs.

Sd/-
JUDGE

MBS
Ct-mck
List No.: 1 Sl No.: 22