



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 25<sup>TH</sup> DAY OF SEPTEMBER, 2023**

**BEFORE**

**THE HON'BLE MR JUSTICE S.G.PANDIT**

**WRIT PETITION NO. 408 OF 2020 (GM-CPC)**

**BETWEEN:**

M/S. MYSORE TRADE LINKS  
LEDGER ACCOUNT,  
A.P.M.P. YARD,  
BANDIPALYA, MYSURU-570001,  
REPRESENTED BY ITS PROPRIETOR  
ABDUL SATAR.

...PETITIONER

(BY SRI. GIRIDHAR S V, ADV.)

**AND:**

M/S. BAVA INDUSTRIES  
GARGESHWARI MAIN ROAD,  
T. NARASIPURA TALUK,  
MYSORE DISTRICT-570001,  
REPRESENTED BY ITS PARTNER,  
SRI B. MUTAHAR IQBAL,  
AGED ABOUT 32 YEARS,  
S/O IQBAL AHMED.

...RESPONDENT

(BY SRI. HONAKHANDE BASAGOWDA PANDIT, ADV.)

THIS PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO CALL FOR THE RECORDS ON THE FILE OF THE X ADDL. CIVIL JUDGE AND JMFC, MYSORE, IN O.S.NO.1014/2016 CULMINATING IN THE ORDER IMPUGNED; QUASH THE ORDER PASSED BY THE X ADDL. CIVIL JUDGE AND JMFC AT MYSORE, IN O.S.NO.1014/2016, DATED 16.12.2019, AS AT ANNEX-J AND CONSEQUENTLY ALLOW THE INTERLOCUTORY APPLICATION NO.3 OF THE PETITIONER AS AT ANNEX-D AND ETC.





THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner, defendant in O.S.No.1014/2016 on the file of the X Additional Civil Judge and JMFC., Mysuru (for short, 'Trial Court') is before this Court aggrieved by order dated 16.12.2019 rejecting I.A.No.3 filed under Section 151 of CPC seeking permission to file written statement and I.A.No.4 filed under Section 151 of CPC to consider I.A.No.1 and pass orders.

2. Heard the learned counsel Sri.Giridhar.S.V., for petitioner/defendant and learned counsel Sri.Honakhande Basagowda Pandit for respondent/plaintiff. Perused the writ petition papers.

3. Learned counsel for the petitioner/defendant would submit that suit of the respondent/plaintiff is one for recovery of money in a sum of Rs.3,98,895/- along with interest. Learned counsel would submit that along with plaint, respondent/plaintiff filed I.A.No.1 under Order



XXXVIII Rule 1, 2, 4 and 5 of CPC to direct the defendant to furnish security equivalent to the suit claim for their appearance. Learned counsel for the petitioner/defendant would submit that order on I.A.No.1 was passed directing the petitioner/defendant to file security to the extent of the suit claim. Learned counsel for the petitioner/defendant would submit that on appearance, petitioner/defendant filed objections to the I.A in terms of Annexure-C. Learned counsel for the petitioner/defendant would submit that once cause is shown, the Trial Court is required to pass orders in terms of Rules 5 and 6 of Order XXXVIII of CPC.

4. Learned counsel for the petitioner/defendant would submit that petitioner/defendant filed I.A.No.3 under Section 151 of CPC along with written statement seeking permission to file written statement. It is submitted that the Trial Court rejected I.A.No.3 and refused to take on record the written statement filed by petitioner/defendant only on the ground that



petitioner/defendant in terms of Order on I.A.No.1, failed to deposit security amount to the extent of suit claim in terms of order dated 03.09.2016. Further, learned counsel would submit that Order XXXVIII would not prohibit the defendant from filing written statement, if he fails to comply the order. Learned counsel would submit that consequences under Rule 6 of Order XXXVIII of CPC would follow, if one fails to show cause or fails to furnish security. But, the said Rule would not prohibit or would not permit the Court to deny filing of written statement. Thus, he submits that procedure followed by the Trial Court is not known to law and Trial Court on the ground that petitioner/defendant has failed to furnish security, could not have rejected I.A.No.3. Thus, he prays for allowing writ petition and to set aside order passed on I.A.Nos.3 and 4, directing the Trial Court to hear I.A.Nos.3 and 4 on its merits.

5. Per contra, learned counsel Sri.Honakhande Basagowda Pandit for respondent/plaintiff would support



the order passed by Trial Court. Learned counsel would submit that since petitioner/defendant failed to honor the order dated 03.09.2016 and as he has failed to deposit the amount equivalent to suit claim, the Trial Court is justified in rejecting I.A.No.3 seeking permission to file written statement.

6. Learned counsel would further submit that Trial Court is also justified in rejecting I.A.No.4 which is filed under Section 151 of CPC requesting the Court to hear I.A.No.1. Learned counsel would further submit that unless the petitioner/defendant deposits the amount as directed by the Trial Court or furnishes security to the extent of claim amount, the petitioner/defendant would not be entitled for any relief. Learned counsel would submit that Trial Court has passed order under Order XXXVIII Rule 1, 2 and 3 of CPC and if the petitioner/defendant is aggrieved by the said order, he ought to have filed appeal under Order XLIII of CPC. Thus, he prays for dismissal of the writ petition.



7. Having heard the learned counsel appearing for the parties and on perusal of the writ petition papers, I am of the view that the trial Court committed an error in rejecting I.A.Nos.3 and 4 under impugned order dated 16.12.2019 for the reasons stated therein and both I.As. need to be reconsidered by the trial Court.

8. The suit of the respondent/plaintiff is one for recovery of money in a sum of Rs.3,98,895/- along with interest. Along with the suit, the respondent/plaintiff also filed I.A. under Order XXXVIII Rules 1, 2, 4 and 5 of CPC with a prayer to direct the defendants to furnish security equivalent to the suit claim for their appearance before the Court and to contest the matter. The trial Court passed order directing the defendant to furnish security to the extent of suit claim on the next date of hearing. The plaintiff filed his objection to I.A. filed under Order XXXVIII Rules 1, 2, 4 and 5 of CPC and had shown cause as required under Order XXXVIII Rule 2 of CPC.



9. Under Order XXXVIII Rule 1 of CPC, the Court is empowered on satisfying that the defendant with an intent to delay the plaintiff or to avoid any process of the Court or to obstruct or delay the execution of any decree that may be passed against him, issue warrant to arrest the defendant and bring him before the Court to show cause why he should not furnish security, for his appearance. Sub-rule (2) of Order XXXVIII of CPC would state that where the defendant fails to show cause, the Court shall order him either to deposit in Court money or other property sufficient to answer the claim against him or to furnish security for his appearance at any time when called upon during the pendency of the suit. When cause is shown by the defendant, the Court is required to consider the cause shown and shall have to pass order in terms of sub-rules (5) or (6) of Order XXXVIII of CPC. In the case on hand, on the application of the respondent/plaintiff filed under Order XXXVIII Rules 1, 2, 4 and 5 of CPC, the trial Court directed the defendant to furnish the security to the extent of suit claim and the trial Court has not passed or



issued warrant to arrest the defendant. When the cause is shown by the defendant, it is appropriate for the trial Court to consider the cause shown and pass orders on the application filed under Order XXXVIII Rules 1, 2, 4 and 5 of CPC.

10. I.A.No.4 was filed by the petitioner/defendant under Section 151 of CPC requesting the Court to hear I.A.No.1 and pass orders. In the peculiar facts of the present case, the trial Court is required to pass orders on I.A.No.1, after considering the cause shown by the petitioner/defendant.

11. The petitioner/defendant filed I.A.No.3 seeking leave to file written statement by condoning delay if any. The trial Court rejected I.A.No.3 on the ground that without depositing security amount to the extent of suit claim, the defendant cannot file written statement and contest the matter. Order XXXVIII of CPC would not prohibit filing of written statement nor the Court could deny filing of written statement. If the petitioner/



defendant fails to furnish security, consequences for not depositing security amount as ordered is different and not depositing the security amount would not result in forfeiting his right to file written statement. In the peculiar facts of the present case, when the trial Court has failed to consider the cause shown by the petitioner/defendant to I.A. filed under Order XXXVIII Rules 1, 2, 4 and 5 of CPC and without passing any further order on I.A.No.1, the trial Court could not have dismissed I.A.No.3 filed under Section 151 of CPC seeking leave to file written statement on the ground stated in the impugned order.

12. For the reasons stated above, the following:

**ORDER**

- (i) Writ petition is allowed.
- (ii) The impugned order dated 16.12.2019 on I.A.Nos.3 and 4 in O.S.No.1014/2016 on the file of the X Additional Civil Judge and JMFC, Mysuru is set aside.



(iii) The trial Court is directed to hear I.A.Nos.3 and 4 afresh and pass appropriate orders, in accordance with law on its merits.

**SD/-  
JUDGE**

NC/MPK  
CT:bms  
List No.: 1 Sl No.: 52