



WP No. 109954 of 2016

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 109954 OF 2016 (GM-CPC)

**BETWEEN:**

SMT.YELLOWWA MOTHER OF NO 649475K,  
LATE NK/CHEF ANAND,  
(SMT.YELLOWWA W/O. HANAMANT PUJER),  
AGE: 61 YEARS, OCC: HOUSEHOLD WORK,  
R/O: VILLAGE & POST: CHIKKUR,  
TAL: MUDHOL, DIST: BAGALKOT.

...PETITIONER

(BY SRI. S.B.HEBBALLI, ADVOCATE)

**AND:**

1. SMT.SAVITRI W/O. OF NO 649475K,  
LATE NK/CHIEF ANAND,  
(SMT.SAVITRI W/O. ANAND PUJAR)  
AGE: 24 YEARS, OCC: TEACHER WORK,  
C/O: RANGAPPA KALLAPPA MALAKANNAVAR,  
R/O: VILLAGE & POST MALALI,  
TAL: MUDHOL, DIST: BAGALKOT.
2. THE MANAGER,  
STATE BANK OF INDIA,  
OPPOSITE APMC MUDHOL.
3. THE UNION OF INDIA,  
MINISTRY OF DEFENCE,

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signed by  
ROHAN  
HADIMANI T  
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REPRESENTED BY ITS SECRETARY,  
NEW DELHI.

4. ARMY GROUP INSURANCE FUND,  
AGI BHAWAN, RAO TULA MARG,  
POST BAG NO 14,  
P.O. VASANT VIHAR,  
NEW DELHI-110057.
5. ASC RECORDS, (AT)  
PIN: 900493,  
C/O 56 AOP.
6. OFFICE OF THE  
PRINCIPAL CONTROLLER OF  
DEFENCE ACCOUNTS  
GRANTS SECTION,  
ALLAHABAD (UP).

...RESPONDENTS

(BY SRI. GURUDEV GACHCHINMATH, ADV. FOR R1;  
SRI. A.P.KAMOJI, ADV. FOR R2;  
SRI. M.B.KANAVI, ADV. FOR R3, R5 AND R6;  
SRI. K.S.PATIL, ADV. FOR R4)

THIS WRIT PETITION IS FILED PRAYING TO QUASH THE  
IMPUGNED ORDER DATED 28.11.2016 ON I.A.NO.I PASSED BY  
THE PRINCIPAL CIVIL JUDGE AND JMFC, MUDHOL IN  
O.S.NO.27/2016, A COPY OF WHICH IS PRODUCED HEREIN AS  
PER ANNEXURE-E.

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



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**ORDER**

1. The petitioner is before this Court seeking for the following reliefs:

- i) *A writ in the nature of certiorari, quashing the impugned order dated 28.11.2016 on I.A.No. I passed by the Principal Civil Judge & JMFC, Mudhol in O.S.No.27/2016.*
- ii) *Any other writ, order or direction as deemed fit be granted in the interest of justice.*

2. The suit in O.S.No.27/2016 has been filed by the petitioner herein who is the plaintiff therein against the respondents herein who are the defendants therein and certain other official parties seeking for the following reliefs:

- a) *Declaring that, the plaintiff is also entitle 50% share in all legal benefit of Family Pension and (Army Group Insurance Fund) AGI and other Legal Benefit arising out of her son's Death Shri. Anand Hanamant Pujer, (Army No.6494754K Nk chef), who died on 06 Jun 2014. And by successors to succeed and inherit the estate left by his son along with Defendant No.1.*
- b) *A decree of mandatory injunction may kindly be issued to the Defendant No.2, 3, 4, 5 and 6 directing them to pay to plaintiff 50% share amount, as legal heir for Family pension, AGI fund, and other legal Benefits as per legal heirs entitle and act accordingly.*
- c) *Any other relief/s to which the Plaintiffs are found entitled to;*
- d) *Full costs of this suit be awarded;*
- e) *Permission to amend the plaint as and when circumstances warrant may kindly be granted;*



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3. In the said suit the written statement came to be filed wherein it is contended that the said Court does not have pecuniary jurisdiction to try the matter.
4. An application under Order XXXIX Rule 1 and 2 of the Code of Civil Procedure, 1908 in I.A.No. I filed in the said suit seeking injunction restraining the defendant No.2 from releasing any amount to defendant No.1 from and out of the account maintained by defendants No.2, 3, 4, 5, and 6 from disbursing any amount from and out of the dues available out of the account of one Anand who is the son of the plaintiff and husband of the defendant No.1.
5. The Trial Court vide its order dated 28.11.2016 rejected I.A.No. I on the ground that it had no pecuniary jurisdiction. It is aggrieved by the same the petitioner is before this Court.
6. Sri. S.B.Hebballi, learned counsel for the petitioner would submit that the Trial Court could not have



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rejected I.A.No. I and thereby, virtually dismissed the suit without following the requirements of Rule 10 of Order VII of the CPC as also of Rule 10A of Order VII of the CPC. The impugned order having rejected I.A.No.I, no further date has been passed in the matter amounting to dismissal of the suit itself which should not have been done only on the basis of the said Court not having pecuniary jurisdiction. At the most, the plaint could have been returned on the ground of lack of pecuniary jurisdiction and to be presented before the Court of proper jurisdiction.

7. Per contra, Sri. Gurudev Gachchinmath, learned counsel for respondent No.1 would submit that the order passed by the Trial court is proper and correct and there is interference required of this Court.
8. Sri. M.B.Kanavi, learned counsel for respondents No.3, 5 and 6 submits that they are formal official parties and any order passed by this Court would be followed by them.



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9. Heard Sri. S.B.Hebballi, learned counsel for the petitioner, Sri. Gurudev Gachchinmath, learned counsel for respondent No.1 and Sri. M.B.Karavi, learned counsel for respondents No.3, 5 and 6. Perused papers.
10. It is the peculiar case where an application filed under Order XXXIX Rule 1 and 2 of the CPC has been rejected on the ground that the Court does not have pecuniary jurisdiction. While doing so, no further date has been passed. It is deemed that the suit itself has been dismissed.
11. Rule 10 of Order VII of the CPC is reproduced hereunder for easy reference:

*"10. **Return of plaint.**-(1) Subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*

*Explanation.-For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.*

*(2) **Procedure on returning plaint.**-On returning a plaint, the Judge shall endorse thereon the date of its*



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*presentation and return, the name of the party presenting it, and a brief statement of the reasons for returning it."*

12. Rule 10A of Order VII of the CPC is reproduced hereunder for easy reference:

**"10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return.-(1)** *Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.*

*(2) Where an intimation is given to the plaintiff under sub-rule (1), the plaintiff may make an application to the Court-*

- (a) specifying the Court in which he proposes to present the plaint after its return,*
- (b) praying that the Court may fix a date for the appearance of the parties in the said Court, and*
- (c) requesting that the notice of the date so fixed may be given to him and to the defendant.*

*(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order for return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-*

- (a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and*
- (b) give to the plaintiff and to the defendant notice of such date for appearance.*

*(4) Where the notice of the date of appearance is given under sub-rule (3),-*

- (a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and*



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*(b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.*

*(5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint."*

13. A perusal of Rule 10 of Order VII of the CPC is clear that any return of plaint is subject to the following of the provisions of Rule 10A of Order VII of CPC and while returning the plaint, the Judge shall endorse thereon the date of its presentation and return, the name of the party presenting it and a brief statement of reasons for returning it.
14. Sub-Rule 10A of Order VII of CPC makes it clear that in any suit after the defendant has appeared, the Court is of the opinion that the plaint should be returned, it shall before doing so, intimate the said decision to the plaintiff and when intimated the said decision, the plaintiff could make an application to the Court specifying the Court in which he proposes to present the plaint after its return, praying for the





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Court to fix a date for the appearance of the parties in the said Court, as also requesting that the notice of the date so fixed may be given to him and to the defendant.

15. In the event of the application not having been made under sub-rule (2) of Rule 10A of Order VII of CPC the Court while returning the plaint the Court shall fix a date for appearance of the parties in the Court in which the plaint is proposed to be presented and give to the plaintiff and defendant notice of such date for appearance. Thus, no Court can return the plaint on the ground of lack of pecuniary jurisdiction without following the requirements of Rule 10 of Order VII of CPC which mandates the following of the procedure prescribed under Rule 10A of Order VII of CPC.

16. In the present case, the Trial Court has rejected the application under Order XXXIX Rule 1 and 2 of CPC in I.A.No. I on the ground that no pecuniary jurisdiction



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exits to the said Court to consider the matter. Neither the Court has returned the plaint nor has it followed the procedure prescribed under Rule 10 nor Rule 10A of Order VII of the CPC. I am therefore of the considered opinion that the impugned order does not stand the test of law and it is contrary to the applicable law and as such, I pass the following:

ORDER

- i) The writ petition is allowed.
- ii) A certiorari is issued, the order dated 28.11.2016 on I.A.No.I passed by the Principal Civil Judge and JMFC, Mudhol in O.S.No.27/2016 at Annexure-E is hereby quashed.
- iii) Exercising the supervisory jurisdiction vested with this Court, I.A.No.I filed under Order XXXIX Rule 1 and 2 of the CPC is allowed. The defendants No.2 to 6 who are respondents No.2 to 6 are restrained from disbursing any amounts in excess of 50% of the amount falling to the share of the



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deceased Nk/Chef Anand bearing No.649475K till disposal of the suit.

- iv) Since the Trial Court is of the opinion that it does not have pecuniary jurisdiction, the matter is remanded to the Trial Court to comply with the requirements of Rule 10 and 10A of order VII of the CPC which shall be so done within a period of 15 days of the receipt of papers by the Trial Court.
- v) Registry is directed to forthwith forward the Trial Court Records to the Trial Court, if secured.

**Sd/-  
JUDGE**

RH