



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

COMPANY APPLICATION NO.362 OF 2023

IN

COMPANY APPLICATION NO.321 OF 2020

IN

COMPANY PETITION NO.77 OF 1987

BETWEEN:

THE OFFICIAL LIQUIDATOR OF
M/S. SHREE CHAMUNDI MOPEDS LIMITED
(IN LIQUIDATION)
ATTACHED TO HIGH COURT OF KARNATAKA
"CORPORATE BHAVAN"
NO.26-27, 12TH FLOOR
RAHEJA TOWERS, M.G.ROAD
BANGALORE- 560 001

...APPLICANT

(BY SRI. SHRISHAIL NAVALGUND, ADVOCATE)

AND:

KARNATAKA INDUSTRIAL AREAS
DEVELOPMENT BOARD
#14/3, 2ND FLOOR, R.P.BUILDING
NRUPATHUNGA ROAD
BANGALORE- 560 001

...RESPONDENT

(BY SRI. BASAVARAJ V.SABARAD, SENIOR ADVOCATE
FOR SRI CHANDRASHEKAR P.V, ADVOCATE)





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THIS COMPANY APPLICATION IS FILED UNDER ORDER 6 RULE 17 OF THE CODE OF CIVIL PROCEDURE, 1908 PRAYING TO ALLOW THE OFFICIAL LIQUIDATOR TO AMEND THE PRAYERS OF THE CA NO.321/2020 IN ACCORDANCE WITH ORDER 6 RULE 17 OF THE CODE OF CIVIL PROCEDURE, 1908 ETC.

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

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The Official Liquidator has presented the present application under Order VI Rule 17 of the Code of Civil Procedure, 1908 read with Rule 6 of the Companies (Court) Rules, 1959, seeking amendment of the application in CA No.321 of 2020.
2. The original company application was instituted with a prayer for execution of a lease-cum-sale deed by the Karnataka Industrial Areas Development Board ("KIADB") in favour of the Company (in liquidation). By way of the present amendment, the Official Liquidator seeks to incorporate an additional and substantive prayer, namely, a declaration that the termination of lease notice dated 10.12.2002 issued by the Karnataka Industrial Areas Development Board is illegal and liable to be set aside.
3. The submission of Sri Shrishail Naval Gund, learned counsel appearing for the Official Liquidator, proceeds on the foundational premise that the Company had been ordered to be wound up by this Court on 14.08.1991 and,



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consequent upon such order, all the assets of the Company came under the custody of this Court.

4. It is contended that once a winding-up order is passed, the Company Court assumes control over the estate of the Company, and the assets stand in custodia legis. Any action affecting the property of the Company in liquidation, including termination of leasehold rights, cannot be undertaken unilaterally by a lessor without obtaining prior leave of the Company Court.
5. It is urged that the termination notice dated 10.12.2002 was issued long after the order of winding up and without seeking permission of this Court. According to the learned counsel, such termination is legally unsustainable and non est in the eye of law. It is further submitted that the subject property forms part of the assets of the Company in liquidation and that CA No.321 of 2020 has been filed seeking execution of the lease-cum-sale deed in respect thereof.
6. The existence of the termination notice constitutes a legal impediment to the grant of the principal relief sought in the company application. Therefore, unless the validity of the termination is examined and set aside, effective adjudication of the prayer for execution of the lease-cum-sale deed would not be possible.



7. The amendment, it is contended, does not alter the foundational cause of action but merely seeks to bring on record a consequential and necessary relief so as to enable this Court to completely and effectively adjudicate the dispute between the parties. Refusal of the amendment, according to the learned counsel, would result in multiplicity of proceedings and compel the Official Liquidator to institute independent proceedings challenging the termination, thereby fragmenting the controversy. On these grounds, it is submitted that the amendment is necessary for determining the real questions in controversy and ought to be allowed.
8. Sri Basavaraj V.Sabarad, learned Senior Counsel appearing for the respondent-KIADB opposes the said application.
 - 8.1. Firstly, he submits that the application is *ex facie* barred by the law of limitation inasmuch as the termination having occurred in the year 2002 and the application for amendment has been filed in the year 2023, which is nearly after a period of 21 years.
 - 8.2. Secondly, he submits that there is no permission which is required to be taken of the Company Court insofar as the termination of a lease is concerned, and in that regard, he relies upon the decision of the Hon'ble Apex Court in **Phatu Rochiram**



Mulchandani vs. Karnataka Industrial Areas Development Board and Others [(2015)5 SCC 244], more particularly, paras 38 and 39 thereof, which are reproduced hereunder for easy reference:

"38. It is clear from the above that prior permission of the Court is required in respect of any attachment, distress or execution put in force or for sale of the properties or effects of the Company. We are of the opinion that the serving of cancellation notice simpliciter would not come within the mischief of this section as that by itself does not amount to attachment, distress or execution, etc. No doubt, after the commencement of the winding up, possession of the land could not be taken without the leave of the Court. Precisely for this reason the Board had filed the application seeking permission. But according to us no such prior permission was required before cancelling the lease. In fact, it is only after the cancellation of the lease that the Board would become entitled to file such an application under Section 537 of the Act. Had the Board gone ahead further and taken the possession after the cancellation and then approached the Company Judge, the situation which occurred in Karnataka State Electronics Development Corpn. Ltd. v. Official Liquidator [OSA No.31 of 2004, decided on 21-6-2005 (KAR)] would have prevailed. On the other hand, it would have been premature on the part of the Board to approach the Company Judge for permission to resume the land without cancelling the lease in the first instance.

39. We thus, hold that no prior permission was required by the Board for cancelling the lease."



- 8.3. Relying on **Phatu Rochiram Mulchandani**, it is contended that the Hon'ble Apex Court has authoritatively interpreted Section 537 of the Companies Act, 1956 and has clearly held that prior permission of the Company Court is required only in respect of attachment, distress, execution or sale of the properties or effects of the Company. The Hon'ble Supreme Court has categorically observed that issuance of a cancellation notice simpliciter does not fall within the mischief of Section 537, as such notice does not, by itself, amount to attachment, distress or execution.
- 8.4. Learned Senior counsel emphasises that the Hon'ble Supreme Court has drawn a clear doctrinal distinction between:
- 8.4.1. Cancellation of lease, which determines contractual rights; and
- 8.4.2. Taking possession pursuant to such cancellation, which would affect the property in custodia legis.
- 8.5. It is only at the latter stage, when possession is sought to be resumed, that leave of the Company Court becomes mandatory. In fact, the Hon'ble Supreme Court has further observed that it would be premature for the statutory authority to seek



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leave for resumption of land without first cancelling the lease. Thus, cancellation is a juridical precondition to any application for resumption.

- 8.6. On this basis, it is submitted that the termination notice dated 10.12.2002 cannot be impugned on the ground that prior leave of the Company Court was not obtained. According to learned counsel, the Board acted strictly in conformity with the law declared by the Hon'ble Supreme Court, cancellation of the lease was effected first, and thereafter appropriate proceedings were initiated for taking possession by filing C.A. No.104 of 2003.
- 8.7. It is therefore contended that the amendment now sought, which proceeds on the premise that termination without leave is void, is fundamentally misconceived in law. Once the legal position stands concluded by the Hon'ble Apex Court, the proposed declaratory relief lacks legal foundation.
- 8.8. Further, it is submitted that the termination notice is dated 10.12.2002. The present attempt to introduce a challenge to the said termination through C.A. No.362 of 2023 (by way of amendment in the pending proceedings) is ex facie belated and hopelessly barred by limitation.



- 8.9. On these grounds, learned counsel submits that the amendment application deserves to be rejected, and C.A. No.362 of 2023 is liable to be dismissed both on merits and on the ground of limitation.
9. Heard Sri Shrishail Navalgund, learned counsel for the applicant and Sri Basavaraj V.Sabarad, learned Senior counsel appearing for the respondent-KIADB and perused the papers.
10. The points that would arise for consideration in the present matter are:

(1) Whether there was a prior permission required to be taken by the KIADB of the Company Court prior to terminating a lease executed by the KIADB in favour of the company in liquidation?

(2) Whether the application for amendment filed under Rule 17 of Order VI of the Code of Civil Procedure is required to be allowed?

(3) What order?

11. The above points are answered as follows:
12. ***Answer to point No.1: Whether there was a prior permission required to be taken by the KIADB of the Company Court prior to terminating a lease executed by the KIADB in favour of the company in liquidation?***



12.1. This aspect is no longer *res integra* inasmuch as the Hon'ble Apex Court in ***Mulchandani's case*** had formulated the following questions for consideration at para 18, which is reproduced hereunder for reference:

"18. Insofar as the dispute on merits is concerned, it has various facets which give rise to the following questions:

18.1. (i) Whether the Company had acquired the ownership of the two plots in question and, therefore, the Board was precluded from terminating the lease and resuming the plots?

or

Whether the property in question continued to be leasehold property as per the Lease Agreement dated 21-12-1984?

18.2. (ii) In the event it is decided that the property was on lease with the Company, whether the notice terminating the lease agreement was legal and justified?

18.3. (iii) Whether prior permission of the Company Court was required to terminate the lease agreement by the Board since the Company was under liquidation?

18.4. (iv) Whether the circumstances warranted the Company Court to allow the application of the Board to resume the said land and take possession thereof?"



12.2. At para 18.3, a specific question has been framed as regards whether prior permission of the Company Court was required to terminate the lease agreement by the KIADB since the company was under liquidation and it has been answered at paras 38 and 39 which have been extracted herein above.

12.3. The Hon'ble Apex Court thus directly addressed the precise legal controversy which arises in the present case, namely, whether cancellation of a lease by the statutory lessor requires antecedent leave of the Company Court once a winding-up order has been passed.

12.4. The said question was conclusively answered in paragraphs 38 and 39 of the judgment. The Hon'ble Supreme Court drew a clear distinction between:

12.4.1. Cancellation of a lease simpliciter, which determines contractual rights; and

12.4.2. Attachment, distress, execution or taking possession, which affects the property of the Company in liquidation and attracts the rigour of Section 537 of the Companies Act, 1956.

12.5. The Hon'ble Supreme Court held that issuance of a cancellation notice does not amount to attachment, distress or execution and therefore does not fall within the mischief of Section 537. Consequently,



no prior permission of the Company Court is required for cancellation of the lease. However, the Court clarified that permission would become necessary at the stage when possession is sought to be resumed, as that would directly interfere with property in custodia legis.

12.6. The ratio laid down by the Hon'ble Supreme Court is categorical and binding. In view of the authoritative pronouncement, it cannot be contended that termination of lease by the KIADB was void for want of prior leave of the Company Court. The legal position stands settled that prior permission is not a condition precedent for cancellation of the lease; it is required only for resumption of possession subsequent to such cancellation.

12.7. Accordingly, I answer Point No.1 by holding that no prior permission of the Company Court was required by the KIADB for cancelling the lease executed in favour of the Company (in liquidation). Permission would, however, be necessary for taking possession pursuant to such cancellation.8.

13. **Answer to point No.2: Whether the application for amendment filed under Rule 17 of Order VI of the Code of Civil Procedure is required to be allowed?**



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13.1. In considering an application under Order VI Rule 17 CPC, the threshold inquiry is one of maintainability. Before examining the necessity or desirability of the proposed amendment, the Court must first determine whether the relief sought to be introduced is legally tenable. It is well settled that a time-barred claim cannot be permitted to be introduced by way of amendment in a pending proceeding. The law of limitation operates not merely as a procedural bar but as a substantive restraint against revival of stale claims. If the relief sought to be incorporated is ex facie barred by limitation, the amendment must fail at the threshold.

13.2. It is no doubt correct that the declaration regarding the validity of the termination notice may have a bearing on the effective adjudication of CA No.321 of 2020. However, the determinative factor is not the relevance of the relief but its legal viability. The proposed amendment seeks to challenge a termination notice dated 10.12.2002. The present amendment application has been filed on 29.11.2023, nearly twenty-one years after the issuance of the termination. A declaratory relief challenging termination of a lease would ordinarily fall within the ambit of Article 58 of the Limitation



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Act, 1963, which prescribes a period of three years from the date when the right to sue first accrues.

13.3. For purposes of limitation, the accrual of the right to sue and the knowledge of the party seeking relief assume significance. The record discloses that the KIADB had filed C.A. No.104 of 2003 on 22.01.2003 seeking permission of the Company Court to resume possession of the property leased to the Company in liquidation. In the said application, it was categorically stated that the lease had already been terminated. Thus, as early as January 2003, the factum of termination stood expressly asserted before this Court.

13.4. Further, the termination referred to in C.A. No.104 of 2003 pertains to an order dated 30.11.2002 issued by the Chief Executive Officer and Executive Member of the KIADB. The said termination order was produced along with the application in the year 2003 itself. The notice dated 10.12.2002 now sought to be impugned is only a covering communication enclosing the termination order dated 30.11.2002. Therefore, the Official Liquidator cannot plausibly contend lack of knowledge of the termination until a later date. The material placed on record unequivocally establishes that the



termination was within the knowledge of the Official Liquidator at least in the year 2003.

13.5. In that view of the matter, the right to challenge the termination accrued in 2002–2003. The present attempt, by way of amendment filed on 29.11.2023, to introduce a declaratory challenge to such termination is hopelessly barred by limitation. Permitting the amendment would amount to reviving a stale and extinguished claim through procedural device, which the law does not countenance.

13.6. Accordingly, I answer Point No.2 by holding that the application for amendment filed under Order VI Rule 17 CPC is not liable to be allowed and stands rejected as barred by limitation.

14. **Answer to point No.3: What order?**

14.1. In view of my answer to point nos.1 and 2, no grounds are made out. C.A.No.362/2023 stands dismissed.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

hkh.