

**(2013) 12 KAR CK 0489**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 51307 of 2013 (GM-CPC)

M/s. Classic Biotech and Exports Ltd.

APPELLANT

Vs

M/s. J.K.M. Research Farm Ltd.

RESPONDENT

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**Date of Decision :** 04-12-2013

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 17

**Citation :** (2013) 12 KAR CK 0489

**Hon'ble Judges :** S.N. Satyanarayana, J

**Bench :** Single Bench

**Advocate :** Vishwanath N, for the Appellant;

**Final Decision :** Dismissed

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## **Judgement**

S.N. Satyanarayana, J.—The defendant in O.S. No. 190/2002 on the file of Senior Civil Judge, Doddaballapur, has come up in this writ petition impugning the order dated 22.10.2013 in dismissing his application, I.A. 14 filed under Order 6 Rule 17 seeking amendment to written statement. For the sake of convenience, the parties herein are referred to by their rank in the court below. The suit in O.S. No. 190/2002 is filed seeking direction to the defendant to pay a sum of Rs. 26,89,606/- with further interest at 24% p.a., from the date of suit till date of realisation and for other consequential reliefs. Said suit is filed on 11.10.1999, wherein summons are served on defendant in the year 2000 and thereafter, written statement is filed by defendant on 24.5.2000. It is stated that the said suit came to be dismissed for non prosecution on 19.10.2005 and subsequently restored in the year 2011. Thereafter, on 31.7.2013, application in I.A. 14 is filed seeking amendment to the written statement. In the said application, amendment is sought not only with reference to the pleadings, but also with reference to counter claim of Rs. 30,00,000/- towards damages payable with interest at 24% p.a., from the date of petition till date of realisation.

2. Admittedly, limitation for counter claim is three years from the date of service of summons, which is in the year 2000, in the instant case. Thereafter, the

defendant filed a detailed written statement on 24.5.2000, wherein it is stated that liberty is sought to initiate proceedings against the plaintiff for recovery of excess amount collected by the plaintiff from the defendant as and by way of damages. Assuming for a moment, that defendant's liberty sought to file counter claim as on the date of filing of written statement i.e., 24.5.2000 is allowed, limitation for counter claim would be three years from that date. Though much has been stated regarding suit being dismissed in the year 2005 and subsequently restored in the year 2011, limitation of three years would expire much before the suit is dismissed in the year 2005, inasmuch as, even according to defendant, three years period of limitation would expire from the date of filing of written statement i.e., 24.5.2000. Hence, the finding of court below in dismissing the application filed by the defendant for the relief of amendment to written statement by relying on the judgment rendered by the Apex court in Revajeetu Builders and Developers Vs. Narayanaswamy and Sons and Others, and in Rameshkumar Agarwal Vs. Rajmala Exports Pvt. Ltd. and Others, , appears to be just and proper. Further, though learned Counsel for petitioner relies on the subsequent unreported judgment of Apex Court in Jitendra Kumar Khan & Ors. v. The Peerless General Finance and Investment Co., Ltd., & Ors., in Civil Appeal Nos. 6784/2013, on going through the same it is clear that the ratio laid down in the aforesaid two judgments are neither specifically discussed nor rescinded therein, therefore, question of relying on the same does not arise. In that view of the matter, question of entertaining this writ petition to consider the correctness or otherwise of impugned order dated 22.10.2013 does not arise.

Accordingly, this writ petition is dismissed.