

PARTICULARS

i	Provision under which the application is filed	Section 151 of CPC R/w Section 141 and Order IX Rule 9 of C.P.C
ii	Relief sought for	To restore I.A.III to hear it on merits
iii	The date on which the application is filed	15.07.2023
iv	Number of application	IA No.VII
v	The date on which the objections are filed by different opponents	
vi	The date on which the orders were passed on the said application	26.11.2024

ORDERS ON I.A.No.VII FILED BY THE PLAINTIFF UNDER SECTION 151 OF CPC R/W SECTION 141 AND ORDER IX RULE 9 OF CPC

The plaintiff has filed this I.A. to restore I.A.III to hear it on merits.

2. In the affidavit annexed to the application, it is averred that plaintiff has filed I.A.III for amendment of plaint. The said I.A. was dismissed for default as the advocate represented the plaintiff had not appeared before the court.

3. It is averred that the passing of orders on merits on I.A.III is essential for the case. If the I.A. is not

restored, plaintiff would be put to great hardship. Accordingly, he prayed to allow the application.

4. It appears that defendant has not filed any objections to I.A.VII.

5. It appears that none of the parties have argued the matter on I.A.VII. Therefore, the arguments on I.A.VII were taken as heard.

6. Perused the materials available on record.

7. Now the points that arise for consideration are as follows;

1. Whether the application deserves to be allowed?
2. What order?

8. My answer to the above points are as hereunder:

Point No.1: In the Affirmative

Point No.2: As per the final order for the following:

REASONS

9. **Point No.1:-** The plaintiff had filed I.A.III under Order VI Rule 17 R/w Section 151 of CPC for amendment of plaint. It appears that the court, noting the absence of the advocate of the plaintiff, had dismissed the application for default. On the face of it, there is an apparent error on the part of the court. I.A. should not have been dismissed for default.

10. If the parties or the advocate were not present before the court on the relevant point in time, the court should have proceeded to pass orders on I.A. and should not have dismissed the I.A. for default. Therefore, the said mistake has to be rectified. As a result, this I.A. deserves to be allowed and I.A.III has to be restored. Accordingly, point No.1 is answered in the Affirmative.

11. **Point No.2:-** In view of the above discussion, I proceed to pass the following:

ORDER

I.A.VII filed by the plaintiff under Section 151 of CPC R/w Section 141 and Order IX Rule 9 of CPC is hereby allowed.

Order dismissing IA No III for default is recalled.

I.A.III is restored.

To hear on I.A.III.

Call on 05.12.2024.

Sd/-

**C/c III Addl. C. J. & JMFC,
Belagavi.**