

**IN THE COURT OF THE SENIOR CIVIL
JUDGE & JMFC, KHANAPUR**

DATED HIS THE 31st DAY OF JULY, 2017

**PRESENT: K. Vidya, B.Sc., M.A., LL.B.,
SENIOR CIVIL JUDGE & J.M.F.C.,
KHANAPUR**

CIVIL MISC. NO. 4 OF 2017
(For restoration of L.A. C No. 184/2008
(Old No. 1/2005))

BETWEEN:

- 1. Shri Baburao
S/o Gangappa Gavada @ Patil,
Aged about 46 years,
Occupation: agriculture
R/o: Savaragali,
Khanapur Taluk,
Belgavi District.**

2. **Shri Vishwas**
S/o Gangappa Gavada @ Patil,
Aged : 44 years,
Occ: Agriculture,
R/o : Savaragali,
Tal : Khanapur,
Dist: Belagavi.
3. **Shri Arjun**
S/o Gangappa Gavada @ Patil
Aged: 42 years,
Occ: Agriculture,
R/o: Savaragali,
Tal : Khanapur,
Dist: Belagavi.

.....**Petitioners**

(By Smt. R. M. Hiremath, Advocate)

AND :

**The Special Land Acquisition Officer
National High Ways
Dharwad.**

(Ex-Parte)

: O R D E R S:

**The Instant Petitioners have filed the
present petition under Order IX Rule 9
of Civil Procedure Code to restore the
L.A.C. NO. 184/2008 (Old No. 1/2005)
on its original file and thereby prayed to
allow the aforementioned petition.**

2. The entire gamut of petition averments is as follows:

- i) That the instant Petitioners herein had filed L.A.C.No. 184/2008 (Old No. 1/2015) pending on the files of this Court for the relief the respondent declare 29 guntas area comprised in R. S. No. 75/7+8 of Savaragali village as acquired and awarded compensation of ₹.49,993/- under award dated 14/05/2003 in No. LAQ/BGM/CR/1/200-2001.

ii) That, the Petitioners have learnt that their reference application was assigned with the number as LAC 1/2005 was made over to Itinerary Court at Khanapur. Later on, regular Court assigned with numbers as LAC No. 184/2008, at that juncture, when situation stood so, Petitioners had not received any summons or notice of said proceedings from the Court and on 13/02/2017 the Petitioners were revealed that their counsel had lost

th track of case and was representing the case and same was not revealed to the instant Applicant due to error in communication.

iii) That on 13/02/2017 the Petitioners were revealed that the claim petition of the Petitioners is dismissed observing that they have failed to appear and lead evidence to prove their claim.

iv) That, the Advocate for the petitioners were not intimated regarding case but unfortunately could not proceed with their evidence when the matter was set down for trial, for the reasons that Learned Advocate for the Petitioners were not intimated regarding the advancement of LAC No. 184/2008 (Old No. 1/2005) and also their counsel is not attending court regularly and this court after noting down absence of the petitioners and counsels, on

11/2/2017 the court was pleased to pass the order that the claim petition is dismissed for default on account of communication error, wherein the absence of the petitioners was not intentional as they were no knowledge regarding dismissal of the said suit filed by the Petitioners for default.

v) That the Petitioners later had stepped in court in regularly as per the fixed date of hearing, wherein unfortunately, On 13/02/2017 the

Petitioners came to know regarding the dismissal of the petition and immediately they applied for certified copy and it was supplied on 16/02/2017, further they did not have any documents of their claim petition, they filed application on 18/02/2017 and they could get copies on 20/02/2017 and thereby sought to condone the inordinate delay and resorted file on its original record and hence on these amongst

other grounds prayed for allowing the this petition.

vi) In response to the due service of notice to the Respondent did not appear before court, hence proceedings against the Respondent was placed ex-parte.

3. The Points that arise for consideration after careful analysis of petition averments and objections is as follows:-

POINTS

1. Whether the Petitioners are entitled for the remedy of restoration of the L.A.C.NO. 184/2008 (Old No. 1/2005) as prayer for by condonation of delay?

2. If so, what Order or Decree?

4. My findings to the above points are as follows :

Point No.1 : In the affirmative.

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

REASONS

- 5. Point No. 1 :** It is evident from records that the Petitioners herein had filed the instant Petition under Order IX Rule 9 of Civil Procedure Code to restore petition on its file and to allow the same on the grounds that non leading of the evidence was unintentional and was merely due to lack of communication. During inquiry, the Applicant No. 2 got himself examined as PW1 and reiterated the petition averments and got marked document at Ex-P1 to 4 ,

wherein, Ex.P-1 is the certified copy of Judgment in LAC No. 184/2008 (Old NO.1/2005), Ex.P2 is the Certified copy of Order Sheet in LAC NO. 1/2005 reflecting the actual proceedings , Ex.P3 is the Certified copy of reference Application, Ex.P4 is the certified copy of reference by L.A. O. along with copy of award.. At this juncture a perusal of Ex.P-1 orders passed in the said LAC petition along with the order sheet reveals that it was dismissed for non prosecution on 11/02/2011 after noting down the absence of Petitioners and

their Counsel, where in factually the Petitioners could not appear before court on account of communication error with counsel, when such being the situation, justice demands that a fair opportunity has to be bestowed to the Petitioners to afford with an fair opportunity to re-open the case in LAC No. 184/2008 (Old NO. 1/2005) as it is well settled proposition of law that Court should not be pedantic in approach while allowing the petition filed for restoration of suit failing which it would result in multifariousness of litigation and

miscarriage of justice. Hence, there is no legal impediment to allow the instant petition failing which it would tantamount to miscarriage of justice and multifariousness of proceedings by condoning the delay. However, the inconvenience met out by the respondents can be compensated by way of costs, Accordingly, I answer point No. 1 in the affirmative.

6. Point No. 2 : In the light of the above findings, I proceed to pass the following :

:ORDER :

**The petition filed by the
Petitioners under Order IX Rule 9
of Civil Procedure Code is hereby
allowed.**

**Consequently, the petition
filed in LAC No. 184/2008 (old
No. 1/2005) before the instant
court is restored to its original
file.**

**Cost of ₹.3,500/- shall follow
the main petition which shall be
paid to respondent in case of**

appearance. At the same time parties are hereby directed to appear before court on 16-08-2017 at 11 A.M. without expecting any notices as such, by treating same as notice, in order to save precious time of court .

(Directly dictated to the stenographer, thereafter computer script generated by her through computer is corrected, revised and then pronounced by me in the open court on this the 31st of July 2017.)

**(K. Vidya)
SENIOR CIVIL JUDGE & JMFC,
KHANAPUR.**

ANNEXURES**LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONER :**

PW.1 : Vishwas Patil

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONER :

Ex.P-1: Certified copy of Judgment of LAC
No. 184/2008

Ex.P-2: Certified copy of Order sheet of
LAC No. 184/2008.

Ex.P3: Certified copy of reference Application,

Ex.P4: Certified copy of reference by L.A. O. along
with copy of award.

**LIST OF WITNESSES EXAMINED ON BEHALF
OF THE RESPONDENT :**

--- Nil--

**LIST OF DOCUMENTS MARKED ON BEHALF
OF THE RESPONDENT :**

--- Nil ---

**(K . Vidya)
SENIOR CIVIL JUDGE & JMFC,
KHANAPUR**