

**IN THE COURT OF THE CIVIL JUDGE & JMFC.,  
SANDUR**

**Dated this 16<sup>th</sup> day of June 2022**

**Present: Sri. Devaraddy** B.A., LL.B, LL.M.  
**Civil Judge & JMFC., Sandur.**

**F.D.P. No. 1/2021**

**Petitioners** : K. Parvathi and Others

**V/s.**

**Respondents** : K. Thipperudra and Others

**I.A. No.II**

**Applicant/**

**Respondent No.3** : Maheshamma

**(By Sri. A.V.K. Advocate)**

**V/s**

**Opponents/**

**Petitioners** : K. Parvathi and Others

**(By Sri. T.M.S. Advocate)**

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**ORDERS ON I.A. No.II**

The respondent No.3 has filed IA No.II U/o IX Rule 7  
R/w Sec. 151 of C.P.C. to set-aside the exparte order passed  
against her and sought permission to file vakalath.

2. The said application filed by accompanying affidavit and in the affidavit has stated that, she is the respondent No.3 in the above case. The petitioners have filed the said case against her and other respondents but court notice is not served on her. Subsequently she came to know that she is placed exparte, hence filed this application to file vakalath by setting aside the exparte order. If the application is allowed no harm will be caused other side. If the application is not allowed then she will be put great hardship and injustice. Hence, prays to allow the application.

3. The learned counsel for petitioners filed objection by denying the averments of the said application. Further stated that the respondent No.3 has refused to receive the notice and notice of respondent No.1 and 2 are served on them. The respondent was placed exparte on 12.04.2021 but she has filed this application on 25.03.2022 to set aside the exparte order without any valid grounds. Further stated

that after lapse of 11 months filed this application to condone the delay without mentioning any specific reasons in the affidavit of the present application. Further stated that the respondent No.3 placed exparte in O.S. No. 135/2019 even though summons duly served on her. Without setting aside the judgment and decree in original suit this application is not maintainable. Hence prays to dismiss the application.

4. Heard on IA No.II by both side.

5. Based on the contents of the present application and objection, the following points arise for consideration;

1. Whether I.A.No II filed under Order IX Rule 7 R/w Sec. 151 of C.P.C., by the respondent No.3 is deserved to be allowed ?

2. What order?

6. Based on the pleadings and materials available on record, the aforementioned points answered as under :

Point No.1 : In the **Affirmative.**

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

### **R E A S O N S**

#### **Point No.1 :**

7. The petitioners have filed the present petition for Final Decree Proceedings as per the judgment and decree passed in O.S. No. 135/2019. The respondent No.3 filed this application to set aside the exparte order passed against her and to file vakalath.

8. The learned counsel for the respondent No.3 submits that non appearing on the previous date is not intentional one but it was with bonafide reasons. Further submits that it is just and necessary to set aside the exparte order passed against her and to file vakalath to appear in this case. If the application is allowed no harm and injustice will be caused other side. If the application is

not allowed then the respondent No.3 will be caused great hardship and injustice.

9. The learned counsel for petitioners submits that there is no valid grounds to condone the delay and set aside the exparte order passed against respondent No.3. Further submits that the respondent No.3 was placed exparte in O.S. No. 135/2019. For which, this petition not maintainable for setting aside the exparte. Hence prays to dismiss the application.

10. The petitioners/plaintiffs have filed suit against the defendants/respondents for partition and separate possession as per O.S. No.135/2019 and suit was partly decreed. Thereafter, this case filed for final decree proceedings. On perusal of the order sheet it reveals that the respondent No.3 placed exparte. Hence, she has filed this application to set aside the exparte order passed against her and sought permission to file the vakalath. The

contention of the petitioners in the objection that unless setting aside the judgment and decree passed in O.S. No. 135/2019, the respondent No.3 cannot seek relief of set aside the exparte order passed in this petition. The said contention is the matter of trial and it is not the stage to decide it unless complete the trial thereon. Moreover, the respondent No.3 has every right and opportunity to appear and take the defence in the present case. On perusal of order sheet it noticed that the respondent was remained absent even though served notice on her. Hence it is just and necessary to impose reasonable costs.

11. By considering the contents of the petition, objection and materials on hand, this court has come to the conclusion that I.A. No. II filed by the respondent No.3 is deserved to be allowed in order to avoid the multiplicity proceedings of the case and decide the matter finally. Hence, Point No.1 is answered in the **Affirmative**.

**Point No.2 :**

12. For the reasons discussed above, proceed to pass the following:

**ORDER**

I.A. No.II filed by the respondent No.3 / applicant U/o IX Rule 7 R/w Sec. 151 of C.P.C. is hereby allowed with cost of Rs 300/-.

Exparte order passed against respondent No.3 is hereby set-aside and vakalath filed by her is taken on record.

[Dictated to the Stenographer, transcribed by him, corrected by me and then pronounced in the open court on this day of **16<sup>th</sup> day of June, 2022**]

**(Devaraddy)**  
**Civil Judge and J.M.F.C.,**  
**Sandur**