

KACD020025712025



**IN THE COURT OF I ADDL. SENIOR CIVIL JUDGE &
JMFC, AT CHITRADURGA.**

**Presided Over by Smt. CHAITRA.A.M
B.Sc. LL.B**

**I Addl. Senior Civil Judge and JMFC.,
Chitradurga.**

Dated: 17th Day of April, 2026

Mis No.21/2025

**Petitioner: Iffco Tokio General Ins., Co., Ltd.,
Costumer Service Centre,
“Sai Shanthi Tower” 5th Floor,
#41, 3rd Main, East of NGFF Layout,
Kasturi Nagar,
Bangalore.**

(By Sri. K.M.B., Adv)

V/s

**Respondents: 1. Sanjay Kumar G.,
S/o Govindaraja G.,
Major, Driver & Businessmen,
R/o Kotturu Village,
Kotturu Taluk,
Vijayanagara District.**

**Now R/o Kelagote,
2nd Cross, Chitradurga.**

**2. Amzad Pasha,
S/o Bashir Ahamed,
Owner of Lorry No.KA-01/AG-9773,
R/o #427, 1st Floor,
Next to Nurani Masjid,
7th Cross, Ilyal Nagara,**

**Jayaprakash Nagara,
Bangalore South – 560078.**

(R-1 - By Sri. N.P.K., Adv)

(R-2 - Exparte)

**ORDER ON PETITION UNDER ORDER 9 RULE 9
OF CPC FILED BY THE PETITIONER**

The petitioner has filed the petition seeking for an order to restore the MVC No. 479/2023 by allowing the present petition in the interest of justice and equity.

2. The Brief facts of the case:

The petitioner has stated that the respondent No.1 herein has filed a claim petition in MVC No. 479/2023 in view of sustaining injuries due to motor vehicle accident occurred on 11.07.2022 against the petitioner and respondent No. 2 herein. Then the petitioner in MVC No. 479/2023 was examined as PW-1 and doctor was examined as PW-2 and closed their side evidence. At that time the petitioner herein did not receive the permit of the said goods vehicle. On 27.06.2025 the legal advocate of petitioner filed the policy copy by oversight and due to work pressure in Lok adalath Cases, the evidence of respondent No. 2 in MVC No. 479/2023 was closed without summoning the RTO as the petitioner herein has taken contention in

their objections. After passing the judgment the petitioner herein found that the said goods vehicle plying without permit hence the respondent No. 2 herein ie., owner of the vehicle has violated the policy and permit conditions. Hence, it is necessary to examine the RTO in MVC case in order to prove the said contention of the insurance company as the insurance company is not liable to pay compensation. The said fact came to the knowledge of the counsel recently therefore the present petition is filed to restore the MVC No. 479/ 2023 to examine the RTO and to produce the permit. The said fact to the knowledge of the petitioner recently and as such there is no willful default on the part of petitioner and the petitioner has got good case and valid grounds to succeed in the case. After applying the copy, the petitioner has filed the petition. On these allegations the petition is filed.

3. The respondent No. 1 has filed objections by stating the petition is not maintainable in law and facts, the petitioner intentionally filed this misc. petition. The contents of the petition are all false. If the petition is allowed much inconvenience will be caused to the respondent No. 1 and if the petition is rejected it will advance the cause of justice and no

prejudice will be caused to the petitioner. The petitioner has not approached this court with clean hands as he has suppressed the material facts. Viewed from any angle the petition filed by the petitioner is not tenable. On these contentions sought for dismissal of the petition.

4. Then the case is posted for enquiry. The petitioner is examined as PW.1 and got marked 01 document at Ex.P-1 and closed their side evidence. The respondents counsel submits their side no evidence.

5. Heard arguments for petitioner and respondent No. 1.

6. The points that arise for my consideration is as follows:-

Point No.1 Whether the petitioner has shown sufficient grounds to consider the relief sought for in the petition?

Point No.2 What Order?

7. My findings on the above points are as follows:-

Point No.1 In the Negative,

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

REASONS

8. **Points No.1:** The petitioner in order to prove his petition examined himself as PW.1. The PW.1 has

filed his evidence affidavit reiterating the entire petition averments and to prove the petition by way of documentary evidence he has produced one document at Ex.P-1. The Ex.P-1 is the Certified copy of judgment in MVC No.479/2023.

9. The petition is filed under Order IX Rule 9 of CPC. The provision of Order IX Rule 9 reads as **Decree against the plaintiff by default bars fresh suit,**

1) Whereas the suit wholly or partly dismissed under Rule VIII, the plaintiff shall be precluded bringing a fresh suit in respect of the same cause of action. But he may apply for an order to set the dismissal aside, and if he satisfy the court that there was sufficient cause for his non appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

Thus, as per the order IX Rule 9 CPC it is clear that when the defendant appears and plaintiff does not appear when the suit was called on for hearing the court shall make an order that the suit be dismissed. It means, when the petition is filed under

Order IX Rule 9 of CPC the defendant must appear and plaintiff fails to appear on the adjourn date. The PW-1 has produced Ex.P-1 Certified Copy of judgment in MVC No. 479/2023. On going through the judgment it goes to show that the judgment was passed in MVC No. 479/2023 wherein both the parties have participated in all the proceedings. As the judgment is passed in MVC No. 479/2023, under these circumstances the present petition filed under Order IX Rule 9 CPC to restore the MVC No. 479/2023 is not maintainable. It means, the MVC No. 479/2023 was not dismissed for non prosecution, but considered judgment was passed. In case if the MVC No. 479/2023 was dismissed for non prosecution, then the petition under Order IX Rule 9 of CPC would be maintainable. As the MVC petition was not dismissed for default, but as a considered judgment was passed therefore, the ingredients of Order IX Rule 9 of CPC to the present petition is not applicable. Thus, in view of above discussion the petitioner has not made out a valid and reasonable grounds consider the relief sought for in the petition. Thus in view of above discussion I answer this point No.1 in the **Negative**.

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

ORDER

The petition filed by the petitioner under Order IX Rule 9 of CPC is hereby dismissed.

No order as to costs.

(Dictated to the Stenographer directly on computer, corrected, revised by me and then pronounced in the open court today on 17th day April, 2026)

**(Chaitra A.M)
I Addl. Senior Civil Judge,
Chitradurga.**

ANNEXURES**List of witnesses examined for petitioner:-**

PW-1 : Sri M.V. Manoj Kumar.

List of documents produced for petitioner:-

**Ex.P1 : Certified Copy of Judgment in MVC
No.479/2023.**

List of witnesses examined for respondents:-

Nil

List of documents produced for respondents:-

Nil

**I Addl. Senior Civil Judge,
Chitradurga.**