

1	Provision under which the application is filed	Under order 7 rule 11(a) of CPC
2	Relief sought for	For dismissal of the petition
3	The date on which the application is filed	07/09/2023
4	Number of the application	IA No.1
5	The date on which the objections are filed by different opponents	17/04/2024
6	The date on which the orders were passed on the said application	20/04/2024

**ORDER ON APPLICATION UNDER ORDER 7
RULE 11(a) R /W Sec.151 OF CPC R/W 166(3) OF IMV
ACT FILED BY RESPONDENT No.2 (IA No.1)**

1. The respondent No.2 has filed affidavit. In the affidavit it is stated that, the petitioner has filed the petition against the respondent for claiming compensation in view of accident occurred on 08/03/2022, but the claim petition is filed on 14/10/2022. As it is an undisputed fact that the said petition is being filed with an inordinate delay has to seek compensation which is eventually abuse of the said process, procedure and contrary to the provisions of prevailing law and therefore it leads to impleadment of the respondent as applicant to contest the case effectively. The recent amendment to

Motor Vehicle Act 1988, wherein the amendment to Sec. 166(3) contemplates the limitation of 6 months to file the claim petition before the courts and for that, ready reference the very section 166(3) is produced before the court that no application for compensation shall be entertained unless it is made within 6 months of occurrence of the accident. The petitioner has filed the said petition after six months of the occurrence of the accident. Thus the petitioner has filed the petition after six months of occurrence of the accident and amendment to the Motor Vehicle Act. Therefore the application must be entertained within a period of 6 months from the date of amendment i.e. 01/04/2022. Therefore, the petition is hit by Sec. 166(3) of I.M.V. Amendment Act 2019 and therefore the petition is not maintainable in the eye of law. Therefore the claim petition is itself is barred by applicable provisions of M.V. (Amendment) Act 2019. Hence petition may kindly be reject as the said claim petition is filed after six months from 03/05/2022 and from the date of occurrence of the accident as per amendment notified to the Motor accident claims. Therefore the petition against the respondent No.2 is liable to be dismissed. On these allegations sought for allowing the application.

2. On the other hand the petitioner has filed objections to the application by stating the application is not maintainable in law or facts. The application filed by the respondent No.2 is misconceived one. The I.O. of Bharamasagara Police have filed the charge sheet after completion of investigation and filed the charge sheet before the 2nd Addl. Civil Judge and JMFC, Chitradurga and the court has received the charge sheet on 23/12/2022. Further contended that, there was a delay in filing the charge sheet by the I.O. of Bharamasagara police and the petitioner No.1 is in depression due to death of her husband and there was a delay in obtaining the documents. Further contended that, there was a delay of 12 days in filing the petition due to delay of filing charge sheet by the I.O. of Bharamasagara. The counsel for the petitioner has taken the charge sheet and all the police papers and thereafter filed the claim petition before this court. Hence the claim petition filed by the petitioner is within time and as such the delay is not intentional one. The Respondent No.2 filed the application only to drag on the proceedings and to escape from the liability. On these contentions sought for dismissal of the application.

3. *Heard on application for both the side.*
4. *The points that arise for my consideration is as follows:*

Point No.1: Whether the application i.e., IA No.1 filed by the respondent No.2 under Order 7 Rule 11(d) R/w Sec.151 of CPC R/W Sec. 166(3) OF IMV ACT deserves to be allowed?

Point No.2: What order?

5. *My findings to the above points as under*

Point No.1: In the Negative

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

REASONS

6. **Point No.1:** *The respondent No.2 has filed application seeking to reject the petition by stating that petition is barred by limitation in filing the petition therefore the petition is liable to be dismissed and sought for allowing the application. On the other hand the petitioner has filed objections contending that the application is not maintainable in law or facts, the same is filed only to drag on the proceedings and to waste the precious court time because the petition is filed only after obtaining charge sheet from the court and there is delay*

in filing the charge sheet by the I.O. of Bharamasagara Police, but the delay is for bonafide reasons and as such the application is devoid of merits and sought for dismissal of the application.

7. *As the application is filed by respondent No.2 seeking to reject the petition by stating that the same is barred by limitation in view of allegations made in the affidavit, it is necessary to know as to whether the application filed by the respondent No.2 is maintainable or not. The respondent No.2 has sought to reject the petition by arguing that the petition is barred by limitation. No doubt as per respondent No.2 the petition is barred by limitation and no doubt the petitioner has admitted that there is a 12 days delay in filing the petition and the petitioner has also stated a reason for delay. Thus when the plea regarding limitation is taken then the said aspect is required to be proved as per law and more over the plea of limitation is based on mixed question of law and facts. Further as per decision reported in **AIR 2014 SC 1476**, the question of limitation would always be as mixed question of facts and law and the petition cannot be rejected on the ground of limitation without a trial would be impermissible. Thus as the respondent No.2 has stated in his affidavit that the*

petition is barred by limitation under these circumstances on the basis of averments made in the affidavit is considered and if any opinion is formed directly stating the petition is barred by limitation and law then it is nothing but giving findings or forming opinion without any trial. Thus the trial is required and as such the arguments canvassed by the counsel for respondent No.2 is not sustainable and acceptable. Thus the plea urged by the counsel for the respondent No.2 at this stage is not possible to accept. Further the counsel for the petitioner has relied the copy of order passed in WP No.201961/2023. As per order passed in WP No.201961/2023 as it is clearly stated that the motor vehicle act being a beneficial act the provisions had to be given beneficial meaning and effect and the benefit under the act cannot be taken away on the technical aspect that to of limitation and as the insurance company filed the writ petition challenging the order wherein the writ petition was dismissed conforming the order of trial court. Under these circumstances even in view of order passed in WP No.201961/2023 the court cannot straight away dismiss the petition on the ground of limitation and as such the order passed in the WP No.201961/2023 is

*applicable to this case. Thus in view of above discussion, I answer this point No.1 in the **Negative**.*

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

ORDER

***The application i.e., IA No.1
filed by the respondent No.2
under Order 7 Rule 11 (d) R/w
Sec.151 of CPC R/W 166(3) OF IMV
ACT is hereby dismissed.***

No order as to costs.

***For objections to main
petition by Respondent No.2.***

Call on by 06/05/2024

***I A.S.C. Jude & JMFC.,
Chitradurga.***