

KAHS510003102019



Presented on : 13-03-2019

Registered on : 13-03-2019

Decided on : 12-07-2023

Duration : 4 years, 3 months, 29 days

**IN THE COURT OF
CIVIL JUDGE AND JMFC AT Belur, HASSAN**

**Presided Over by PRASANNA KUMAR C., B.A.L, LL.B.,
Civil Judge & JMFC, Belur**

Dated this the 12th day of July, 2023

Misc/6/2019

Between:

Shri. Rudrappa S/o Siddappa,

Aged about 56 years,

R/at: Malasvara Village,

Arehalli Hobli, Belur Taluk.

....Petitioner

(Shri. S.N.Lingesh, Advocate for Petitioner)

And:

Shri. Mumathaj S/o Mohammed Ghouse,

48 years

R/at: Gurgihalli Village,

Arehalli Hobli, Belur Taluk.

.. Respondent

(Shri. K.L.Nataraja, Advocate for Respondent)

ORDERS ON MAIN PETITION

This petition is filed by the Petitioner under Order 9 Rule 13 of Code of Civil Procedure seeking to set-aside the exparte decree passed by this Court in O.S. No.93/2018, dated 02-06-2018 and seeks opportunity to contest the said suit on merits.

Brief facts leading to the present petition are as under:

2. It is contended that petitioner herein is the defendant and respondent is the petitioner in O.S.No.93/2018. The summons in O.S.No.93/2018 was not served on the petitioner, but intentionally it was reported that he had refused the service of summons and without obtaining the signature, it was reported as refused by colluding with the respondent. The petitioner with reference to the report of refusal of summons has contended that “ ಸಮನ್ಸ್‌ನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ ಸಮನ್ಸ್‌ ಜಾರಿ ಮಾಡಲು ಹೋದಂತಹ ವ್ಯಕ್ತಿ ” ಅರ್ಜಿದಾರರಿಗೆ ಸಿಕ್ಕಿ ಸಹಿ ಮಾಡಿ ಎಂದು ಕೇಳಿದಾಗ ಸಹಿ ಹಾಕುವುದಿಲ್ಲ ಎಂದು ತಿರಸ್ಕಾರ ಮಾಡಿದ್ದರಿಂದ ” ಎಂದು ವರದಿ ನೀಡಿರುತ್ತಾರೆ. ಆದರೆ, ಯಾವ ವಿಚಾರವಾಗಿ ಸಹಿ ಮಾಡಬೇಕು, ಯಾತಕ್ಕಾಗಿ ಸಹಿ ಮಾಡಬೇಕು, ಯಾರು ದಾವಾ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಏತಕ್ಕಾಗಿ ಸಹಿ ಮಾಡಬೇಕು ಎಂದು ಏನು ವರದಿ ಮಾಡಿರುವುದಿಲ್ಲ”.

3. Thereafter, the signature of Shri.B.H.Ismail who is villager has signed the summons to the report of the process server and the same shows that the process server has colluded with the petitioner. The petitioner is a respectable person and if the summons was served, he would have definitely attended the court and contested the suit. The petitioner is having reasonable grounds and documents to defend the suit in O.S.No.93/2018. The petitioner after service of notice in the Execution Petition filed by the respondent herein has filed this case along with application under Section 5 of the Limitation Act seeking condonation of delay.

4. On service of notice of the petition, the respondent has appeared and filed his objection to the main petition and denied the petition averments contending that the petitioner/defendant has willfully refused service of summons in O.S.No.93/2018. Further there is no any acceptable reasons for condonation of delay. Hence, the respondent has sought for dismissal of both objections and the application filed seeking condonation of delay. Thereafter, this court has taken up the matter for enquiry on the application filed by the petitioners seeking for condonation of delay. As such the following points would arise for consideration of this court.

POINTS

1) Whether the petitioner has made out the grounds for condonation of delay in filing the petition?

2) What order?

5. In order to establish the case the petitioner got himself examined as P.W.1 and got marked Ex.P.1 to Ex.P.4 and closed his side. The learned counsel for respondent has continued cross-examination of P.W.1 and Ex.R.1 was marked during the course of cross-examination. The respondent did not choose to adduce any evidence.

6. Heard arguments of both sides. On the basis of petition, affidavit, objection statement, pleadings, oral and documentary evidence coupled with all the materials available on record, answer of this court to the above points is as under:

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

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

REASONS

7. **Point No.1:** This petition is filed by the petitioner seeking to set-aside the exparte judgment and decree passed by this

court in O.S. No.93/2018 dated 02.06.2018. Along with the petition, the petitioner has filed application under Sec.5 of the Limitation Act for condonation of delay of 283 days in filing the petition. In lieu of enquiry on the delay caused, the petitioner has got himself examined as PW1, filed affidavit in lieu of his examination in chief and reiterated the entire petition averments. Ex.P.1 is the order sheet in O.S.No.93/2018, Ex.P.2 is the judgment in O.S. No.93/2018 dated 02.06.2018, Ex.P.3 is the plaint in O.S. No.93/2018, Ex.P.4 is the summons issued to the petitioner in O.S. No.93/18 along with the report.

8. The petitioner/P.W.1 has in his examination in chief deposed that he has not received any summons or refused service of summons of the suit in O.S.No.93/2018. Further on service of notice in Execution case filed by the respondent herein, he has collected the documents and filed this petition. As such, there is delay of 283 days in filing this petition. Hence, the present petition. During the course of cross-examination, petitioner/P.W.1 has completely deposed contrary and inconsistent to the petition averments as well as the deposition made in his examination in chief itself. The most important thing is whether he has refused the service of summons or not. In this regard, though question was suggested to him regarding refusal of summons, nothing has been elicited to show that the petitioner has refused the same.

9. Another part is as to when the petitioner has acquired knowledge regarding decree of the suit in O.S.No.93/2018. In this regard, P.W.1 has deposed that on service of notice in execution case, he has approached his counsel and filed this petition. However the petitioner has not disclosed the case number of the Execution Petition as well as the service of notice of the said Petition. But to the contrary in his examination in chief, he specifically deposed that he came to know about one week ago as on the date of his examination in chief regarding refusal of the summons by him and when he verified the RTC extracts in the Taluk office. Even the P.W.1 inconsistently deposed that he came to know about one week ago as on the date of his deposition about the disposal of the suit. The respondent has contended that since the petitioner has violated the decree passed by this court a notice was issued to him. When the same was questioned to P.W.1, he pleaded ignorance, but he identified his signature on the RPAD acknowledgment which is marked as Ex.R.1. But he deposed that he is not aware as to when he has affixed his signature on Ex.R.1, but he does not deny the signature on Ex.R-1.

10. Even further P.W.1 has given inconsistent answers that he has obtained Ex.P.1 to Ex.P.4 court documents in the Taluk office. Even the petitioner/ P.W.1 deposed that he has filed this petition since the respondent used to cause

interference about 8-10 days as on the date of his deposition. Even P.W.1 inconsistently deposed that he is not aware about the nature of the suit filed by the respondent and the order/judgment passed by this court therein. He came to know of the said facts about 8-10 days prior to his deposition. The petitioner while deposing found to be prudent man having knowledge of revenue proceedings as deposed by himself, but his inconsistent and contrary statements during the course of cross-examination has not convinced this court to accept the contention that he has not avoided the service of summons.

11. Furthermore, the judgment in O.S.No.93/2018 was passed on 02.06.2018. Ex.R.1 was served on the petitioner/P.W.1 on 22.11.2018. The application seeking certified copy of the Ex.P.1 to Ex.P.4 was filed on 21.02.2019 and the same was ready and delivered on 22.02.2019, but the petitioner has suppressed regarding the notice issued by the respondent as per Ex.R.1. Even though Ex.R.1 was served on the petitioner on 22.11.2019, he remained silent and he presented this petition after lapse of 3 months. There is no doubt delay has been caused, but it cannot be said that the said delay caused on the part of petitioner is not intentional, but the same shows the deliberations on the part of the petitioner. Even though if it is believed that for the sake of convenience that the service of summons in the suit was not refused by the petitioner, further again on the part of

petitioner show that he was very deliberate and not diligent in approaching this court at the earliest point of time to curtail the delay.

12. The learned counsel for petitioner has relied on the decision reported in **(2018)15 SCC 127 between Ummer V/s Pottengal Subida and others** wherein the Hon'ble Apex Court was pleased to hold that if the reasons assigned by the applicant are genuine, delay may be condoned. In that event requirement of explanation of each day's delay is no longer good law. Hence, the Hon'ble Apex Court was pleased to condone the delay by imposing cost of Rs.10,000/-.

13. However, in this case, though the evidence adduced by the petitioner more particularly the deposition during the course of cross-examination, is completely inconsistent, contrary and against the materials produced by the petitioner himself. As per Ex.R.1, the same shows that the petitioner had knowledge of decree passed by this court on 22.11.2018. But he was negligent in applying for the certified of copies at that point of time itself and would have been approached this court at the earliest point. Therefore, even though this court has inclined to accept that service of summons was not refused on plain consideration, this court declines to accept the reasons stated by the petitioner in approaching this court by way of this petition and the application. In this regard, this

court comes to the conclusion that petitioner is not diligent and deliberations which have come out through his mouth during the course of cross-examination has resulted fatal to the case of the petitioner and the same has come in the way of petitioner. Therefore, this court is not inclined to accept the grounds urged by the petitioner in the application seeking for condonation of delay. As such, the application is liable to be dismissed and as a consequent, the petition also deserves to be dismissed. Accordingly, this court answered Point No.1 in the **Negative.**

14. **Point No.2:** For the foregoing reasons and discussions made above, this court proceed to pass the following:

ORDER

- I.A. No.1 filed by the petitioner under Section 5 of the Limitation Act is hereby dismissed.
- No order as to costs.
- Consequently, the petition filed by the petitioner under order 9 Rule 13 of Civil Procedure Code is also dismissed.

(Dictated to the stenographer, transcribed by her, transcription corrected by me and then pronounced in the open court, on this the 12th day of July 2023)

(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.

-ANNEXURE-

I. WITNESSES EXAMINED FOR THE PETITIONER:

PW-1: : Rudrappa

II. WITNESSES EXAMINED FOR THE RESPONDENT :

Nil

III. DOCUMENTS PRODUCED BY THE PETITIONER:

Ex.P1 : Order sheet of O.S.No.93/2018

Ex.P2 : Certified copy of judgment and decree
in O.S.No.93/2018

Ex.P.3 : Certified copy of plaint in
O.S.No.93/2018

Ex.P.4 : Summons issued to defendant

IV. DOCUMENTS MARKED FOR THE RESPONDENT

Ex.R.1 : Acknowledgment

**(Prasanna Kumar C.)
Civil Judge & JMFC, Belur.**

(Order on Main Petition signed and pronounced in the open court vide separate order)

ORDER

- I.A. No.1 filed by the petitioner under Section 5 of the Limitation Act is hereby dismissed.
- No order as to costs.

- Consequently, the petition filed by the petitioner under order 9 Rule 13 of Civil Procedure Code is also dismissed.
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(Prassanna Kumar C.)
Civil Judge & JMFC, Belur.