



IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANAGAL

Present: Smt. Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge and JMFC., Hangal.

Civil.Mis.No.11 of 2022

DATED THIS THE 1st DAY OF JULY 2026

Petitioners	1	Smt.Rathanavva W/o Shivaputrappa Neeralagi, Age: 50 years, Occ: Agriculturist, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
	2	Sri.Satish S/o Shivaputrappa Neeralagi, Age: 33 years, Occ: Agriculturist, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
	3	Sri.Malatesh S/o Shivaputrappa Neeralagi, Age: 31 years, Occ: Agriculturist, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
	4	Sri.Harish S/o Shivaputrappa Neeralagi, Age: 28 years, Occ: Agriculturist, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
		(By Sri. M.G.Panigatti – Adv.,)

V/s.



Respondents	1	Smt.Akkamma W/o Neelanagouda Hebbal, Age: 65 years, Occ: Agriculturist, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
	2	Smt.Pushpa D/o Neelanagouda Hebbal, Age: 45 years, Occ: House hold work, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
	3	Sri.Mahabaleshawar S/o Neelanagouda Hebbal, Age: 41 years, Occ: House hold work, R/o: Kalvekallapura village, Tq: Hangal, Dist: Haveri.
		(Respondent No.1 and 2 Absent) (Respondent No.3 Dismissed)

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.

ORDER ON UNDER ORDER IX RULE 9 R/W

SEC.151 OF C.P.C.

The petitioners/plaintiffs have filed this petition U/o.IX Rule 9 R/w Sec.151 of C.P.C., by seeking to set aside an order of dismissal of suit in O.S.No.85/2020 for



non-prosecution dated 15-03-2022 and thereby prayed to restore the said suit for disposal on merits.

2. The brief facts of the petitioners' case is as follows:-

(a) It is pleaded that, the petitioners/plaintiffs had filed O.S.No.85/2020 against the respondents/defendants for specific performance of contract over the suit schedule property. During the proceedings of the suit, the case was posted for evidence of petitioner No.2 to 4 on 15-03-2022 and at that time the said petitioner No.2 to 4 were staying in Bengaluru for their personal work and also the plaintiff No.1 is mother of the plaintiff No.2 to 4 and the plaintiff No.1 did not know the said date of adjournment of suit and also the counsel for the plaintiffs was engaged in the Hon'ble Civil Judge and JMFC, Hadagali and as such, the petitioners and their counsel did not appear before the Court on 15-03-2022 for evidence.

(b) It is further pleaded that, there was no deliberate intention in non-prosecuting suit. It is due to bonafide reasons of their family. The petitioners/plaintiffs have got good case on merits and they have got very good chance in succeeding in the suit. Therefore, under these circumstances it is just and necessary to restore the suit



on file by setting aside order of dismissal of suit for non prosecution dated 15-03-2022 and on such restoration to proceed with the suit by the petitioners/plaintiffs on merits. If the suit is not restored, the petitioners are going to lose the valuable right over the suit property, if the suit is restored no harm will cause to anybody and the present petition is well within time. On these grounds, the petitioners/plaintiffs pray to allow the petition.

3. In spite of issue of notice of petition, the respondent No.1 and 2 remained absent before the Court. Hence, placed as absent. Among them the respondent No.3 was reported to be dead and as no steps were taken the present petition in respect of respondent No.3 was dismissed.

4. The points that would arise for the consideration of this Court are as follows:-

POINTS

1. Whether the petitioners/ plaintiffs have made out sufficient reasonable grounds to restore the suit in O.S.No.85/2020 on the file of this Court?

2. What order?



5. In order to prove the case, the petitioner No.4 has examined himself as PW-1 and got marked Ex.P1 on his behalf. And as the respondent No.1 and 2 were placed as exparte the cross examination of PW.1 was taken as Nil and as there was no further petitioner side evidence the matter was posted for arguments.

6. Heard the arguments of counsel for petitioners and perused the materials available on record.

7. The findings of this Court on aforesaid points are as follows:-

Point No.1: In the Affirmative
Point No.2: As per final order
for following:-

REASONS

8. **Point No.1:-** It has been contended by the petitioners/plaintiffs that, they have filed the suit in O.S.No.85/2020 on the file of this Court for the relief of relief of specific performance of contract over the suit schedule property. The brief facts of the petition was already narrated above. It is further contended that, when this court fixed the said case for examination of petitioner No.2 to 4 on 15-03-2022 and at that time the said petitioner No.2 to 4 were staying in Bengaluru for their personal work and also the plaintiff No.1 is mother of the



petitioner No.2 to 4 and the petitioner No.1 did not know the said date of adjournment of suit and also the counsel for the petitioners have engaged in the Hon'ble Civil Judge and JMFC, Hadagali and as such, the petitioners and their counsel were did not appeared before the court on 15-03-2022 for examination and consequently this Court was pleased to dismiss the said suit for non prosecution. Unless aforesaid suit is restored for disposal on merits, the petitioners will be put to heavy loss and inconvenience which constrained him to file this petition.

9. In order to prove the aforesaid petition averments, as stated earlier, the petitioner No.4/plaintiff No.4 has examined himself as PW-1 by filing affidavit in lieu of examination chief, wherein she has reiterated the petition averments. The PW-1/petitioner No.4 has relied on document as per Ex.P1. Ex.P1 is certified copy of the entire ordersheet in O.S.No.85/2020 on the file of this Court.

10. In the context relief sought for in the main petition and substantive oral evidence let by PW-1 in the form of affidavit filed in lieu of examination in chief, on perusal of certified copy of Ex.P1 order sheet, it is clearly forthcoming that on account of failure of the petitioner No.4/plaintiff No.4 herein including their counsel, apparently this Court



was pleased to dismiss the suit on 15-03-2022 for non-prosecution. Said contents of order sheet further demonstrate the fact that it is only due to absence of the petitioner No.4/plaintiff No.4 herein or their counsel before the court on the said date, this court was pleased to dismiss the suit for non prosecution for failure of the petitioners to lead their evidence.

11. It is true that, due to lack of diligence of the petitioner to proceed with the suit, same was dismissed. However, U/o 9 Rule 9 of CPC confirms vide discretionary power and authority to restore the suit which was dismissed for non-prosecution with a rider or condition that the plaintiff/petitioner able to make out sufficient and reasonable grounds for his non appearance when the suit is dismissed for non-prosecution. As indicated in detail earlier, the petitioners have advanced reasons and grounds for non appearance on the day fixed for plaintiff evidence or dismissed suit for non-prosecution is due to some genuine reasons that they were residing in Bengaluru for their livelihood. Therefore, it appears to be sufficient or reasonable grounds to set aside order of dismissal of suit for non-prosecution dated 15.03.2022.



12. Even otherwise, it is settled principle of law that fair opportunity must be offered to the parties to establish their case on merits. The Principle of natural justice implies fundamental rule that reasonable opportunities are to be extended to the parties to prove their case. If the suit of the plaintiffs is not restored, it would be violative of fundamental rule of principle of natural justice and therefore, suit of the petitioners herein is for the relief of Specific Performance. Such being the facts in issues involved in the suit, the considered opinion of this court is that suit is to be decided on merits of the case upon due trial and evidence by restoring the suit.

13. At the same time, it is requisite to impose some reasonable cost on the petitioners in not showing diligence in prosecution of original suit as condition for restoration of suit in O.S.No.85/2020. It is pertinent to note that, apparently original suit in O.S.No. 85/2020 was dismissed on 15.03.2022 and the present petition was filed for restoration of suit after the limitation period of 30 days from date of dismissal of suit for non-prosecution as provided under article of 122 of Limitation Act 1963.

14. In this regard the petitioners have filed IA.No.I under Section 5 of the Limitation Act and reasonable



grounds have been made out to consider IA.No.I and the delay in filing the present petition is hereby condoned. Accordingly, this Court has answered the point No.1 in the affirmative.

15. **Point No.2:-** In the light of said reasons and discussions, this Court has proceed to pass the following:-

ORDER

The petition filed U/o IX Rule 9 of C.P.C., is hereby allowed on cost of Rs.500/-.

Consequently, suit in O.S.No.85/2020 on the file of this court filed by the petitioners is hereby ordered to be restored for disposal on merits.

The petitioners are hereby directed to deposit the cost of Rs.500/- to the TLSC, Hangal.

The office is directed to put the records in O.S.No.85/2020 on the file of this court on 03-10-2026 for further proceedings and petitioners are hereby directed to appear on said date with out there being any notice.

(Dictated to the stenographer and got typed by him, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 1st day of July - 2026)

**(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.**

**ANNEXURE****LIST OF WITNESSES EXAMINED ON BEHALF OF THE PETITIONERS:-**

PW-1: Sri.Harish S/o Shivaputrappa Neeralagi 03-08-2024

LIST OF DOCUMENTS MARKED ON BEHALF OF THE PETITIONERS:-

Ex.P1: Certified copy of entire order sheet in O.S.No.85/2020

LIST OF WITNESSES EXAMINED ON BEHALF OF THE RESPONDENTS:-

-----NIL-----

LIST OF DOCUMENTS MARKED ON BEHALF OF THE RESPONDENT:-

-----NIL-----

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.