

Misc. No.6/2025

**ORDER ON I.A.NO.1 U/SEC.151 OF CPC**

The petitioner has filed this application U/Sec.151 of CPC and sought to stay the operation and execution of the judgment and decree passed by this court in OS No.81/2023 on 08.04.2025.

The petitioner has sworn to an affidavit in support of IA and stated that the respondent No.1 had filed suit for specific performance of contract against the petitioner and the respondent NO.2 in OS No.81/2023. In the said suit this court passed ex parte decree. In the suit suit summons was not personally served on this petitioner and it was served on the respondent No.2 herein. Therefore, this petitioner had no knowledge about the pendency of the suit and passing of ex parte decree. Hence, prays to allow the IA.

The respondent No.1 has filed objections to I.A. and denied the contents of the affidavit filed in support of the IA and contended that the application is not maintainable. The petitioner has not made out sufficient cause to stay the operation

and execution of the decree. The petitioner has filed this application only with an intention to drag the proceedings. Hence, prays to dismiss the I.A.

Perused the records. Heard arguments.

The copy of judgment and decree in OS No.81/2023 shows that the respondent No.1 herein had filed suit for specific performance of contract against the petitioner and respondent No.2 herein. After service of suit summons the defendant No.1 i.e., petitioner herein remained absent and hence she was placed *exparte* and the respondent No.2 herein appeared through their counsel and filed the written statement. Thereafter, this court partly decreed the suit of the plaintiff and directed the defendants No.1 and 2 i.e., petitioner and respondent No.2 herein to refund earnest money of Rs.20 Lakhs to the plaintiff/respondent No.1 with interest @ 6% per annum. The report of the process server in OS No.81/2023 shows that suit summons were personally served on the defendant No.2 and suit summons of defendant No.1 was served on defendant No.2 who is sister of defendant No.1. The above service of suit summons is considered as proper service of summons as provided under order 5 rule 15 of CPC. Therefore, the petitioner herein cannot say that suit summons was not served on him in OS NO.81/2023.

It is to be noted that in the cause title the address of defendant No.1 and 2 is shown as both R/o Bommanahalli and the same shows that the defendants are residing in Bommanahalli village. Accordingly suit summons were served on the said address and suit summons was personally serve on the defendant No.2 and suit summons of defendant No.1 was served on defendant No.2 who is his sister. Therefore, the service of suit summons has to be considered as proper service as provided under order 5 rule 15 of CPC. Further, the judgment and decree show that the defendant No.1 gifted the

suit property to defendant No.2 through gift deed dtd: 16.09.2020. The same shows that the defendant No.2 is not having any adverse interest against the defendant No.1. Therefore, there is no reason to conclude that suit summons was not properly served on the defendant No.1/petitioner herein. Therefore, there is no sufficient reason to stay the operation and execution of the judgment and decree passed in OS No.81/2023. Hence, the following;

**ORDER**

The application filed by the petitioner U/Sec.151 of CPC is hereby dismissed.

**Senior Civil Judge & JMFC, Sedam.**

For petitioner evidence  
Call on 20.06.2026.

**Senior Civil Judge & JMFC, Sedam.**