

MVC 784/2023

Learned counsel for petitioner is present.

Learned counsel for the respondent No.2 is present.

Learned counsel for the respondent No.2 submits that the IA-I may be allowed on costs.

Heard Learned counsel for petitioner on IA-I.

For orders on IA-I

Kept by

ORDER ON IA-I

1. The application under consideration is filed under section 151 of C.P.C by the petitioner seeking that the order of dismissal of the petition be set aside and the petition as be restored, in the interest of justice and equity.
2. In support of the application the learned counsel for the petitioner has filed memo of facts contending that as he was engaged in out station work, he was unable to appear before the court in the meanwhile, the petition came to be dismissed. On these amongst other grounds it is

prayed that the application be allowed and the petitioner seeking that the order of dismissal of the petition be set aside and the petition as be restored.

3. Heard the learned counsel for petitioner on IA-I.

5. On careful perusal of application under consideration and the affidavit in support of it, the following points arise for the consideration of this court:

1. Whether the petitioner has made out sufficient grounds to restore the petition to its original number by setting aside the dismissal order?

2. What order:

6. After carefully analyzing the application, objections, ordersheet and the authorities relief upon by plaintiff, this court proceeds to answer the afore raised points for consideration as under:

Point No.1 : In the Affirmative

Point : As per the final orders,

for the following reasons.

:REASONS:

POINT No.1:

7. At the very outset it is clear that the application is filed praying that the petitioner seeking that the order of dismissal of the petition be set aside and the petition as be restored. It is the contention of the learned counsel for the petitioner that as he was held up in out station work at some other court he was unable to appear before the court and even during the course of arguments, the learned counsel for the petitioner submitted that as he was held up in some other court, he was unable to appear before the court. However considering the fact that the application is filed on the very next working day, this tribunal is of the opinion that the application is very much maintainable.

8. The learned counsel for the petitioner makes it clear that she could not inform her party and could not appear due to unavoidable circumstances as such it is the firm opinion of this court that the innocent party should not be made to suffer due to mistake on the party of the learned counsel for the petitioner. Moreover learned counsel for the respondent has also submitted that the application may be allowed and the order of dismissal of the petition passed be set aside and the petition as be restored. Hence, the *Point for Consideration No.(i) is answered in the affirmative.*

9. **POINT No.(ii) :**

In view of the finding of this court on point No.1, this court proceeds to pass the following order:

ORDER

“IA-I filed under section 151 of CPC by petitioner is hereby allowed.

Consequently the order dated 21.08.2025 whereby the petition was dismissed for non prosecution is hereby recalled and the petition is ordered to be restored to its original number.

Further the parties are directed to appear before this tribunal.”

For petitioner evidence.

Call on 13.10.2025.

sd/-
(AFTHAB.K.)
Prl. Judge,
Court of SC., & MACT., Mysuru.