

KAMS300036282022



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE  
AND J.M.F.C AT HUNSUR**

**Present:** Smt.Anitha, B.A. (Law) L.L.B.,  
Prl.Senior Civil Judge & JMFC.,  
Hunsur.

**Dated this the 15<sup>th</sup> day of April, 2026.**

**Mis.No.4/2022**

Petitioner: M.B.Suresh, S/o Bommarayi Gowda,  
Aged about 65 years, Retired Head Master,  
R/at No.411, Haranjikere (Kate) Road,  
Hootagahalli, Mysuru.

**(By: Sri.M.R.Harish, Advocate)**

-Vs-

Respondent: H.N.Sunitha, W/o M.B.Suresh,  
Aged about 45 years, R/at C/o Sakkamma,  
House No.441, Haranjikate Road,  
Hootagahalli, Mysuru.

**(By: Sri.V.Venkatesh, Advocate)**

**ORDERS PASSED ON MAIN PETITION**

The petitioner has filed this petition under Order IX Rule 13 of CPC seeking for setting aside the exparte judgment passed by this court in MC No.25/2019 dated 11.11.2021 and

to restore the said case by permitting the petitioner to contest the petition.

2. It is the specific case of the petitioner that, he is residing in the address mentioned in the cause title and the respondent filed MC No.25/2019 before this court and obtained exparte decree of divorce. No summons has been issued to him and also alleged that, prior to filing the case the respondent issued notice to false address and the petitioner able to get the copy of the legal notice on 16.08.2019 and it has been suitably replied and also alleged that in the reply notice that he has mentioned about issuing the notice to the false address. It is further stated that, the respondent again while filing MC No.25/2019 had given false address of the petitioner and obtained false endorsement that, the RPAD being returned with a shara no such address as per order-sheet dated 24.01.2020. The order-sheet in MC No.25/2019 dated 20.02.2020 reveals that further notice was re-issued to the petitioner through RPAD which is not complied by the respondent. That by over looking the order dated 20.02.2020 further the respondent obtained summons by affixture which was according to the order-sheet was not acted upon upto 15.01.2021. The order of affixture is kept in abeyance as per the order-sheet and on 06.03.2021 even though the respondent had not taken summons by way of paper publication it reveals that, the notice was issued to the

petitioner by way of affixture before 19.03.2021. The confused proceedings in MC No.25/2019 on 21.04.2021 had resulted in placing the petitioner exparte and posted for evidence. In MC No.25/2019 the respondent had played mischievousness in not securing the petitioner as per law by proper service of summons. The petitioner had no knowledge at all whatsoever about the proceedings pending in MC No.25/2019 until 15.04.2022 when the exparte divorce was canvassed by the respondent in public place at Hootagahalli, Mysuru wherein the petitioner resides.

3. It is further stated that, immediately on 22.04.2022 the petitioner engaged the service of counsel, verified MC register in the office of this court and to his shock and surprise it was noticed that the respondent has obtained exparte decree in MC No.25/2019 on 11.11.2021 by using her malafide intelligence. Immediately, on 22.04.2022 the petitioner applied for copies in MC No.25/2019 which was received on 04.06.2022 and due to SOP for COVID- 19 which was extended till 1<sup>st</sup> week of March, the petitioner filed this petition. The petitioner further stated that, the respondent is holding house in her name on the investment of the petitioner and he had denied the petition averments. The petitioner suffers great injustice if the exparte judgment and decree is not revoked and not permitted to contest the said case as this respondent will gain unlawful by the said decree. Hence,

prayed to set-aside the order passed by this court in MC No.25/2019 dated 11.11.2021 and to restore MC by permitting the petitioner to contest the said petition.

4. After filing of the petition this court issued notice to the respondent and she appeared through her counsel and filed the objection statement. In the objection statement the respondent contended that, the application is not maintainable under law or on facts. It is also contended that, the petitioner is not residing in the address mentioned in the petition. It is also contended that, the respondent and the petitioner are husband and wife and on 11.07.2021 the marriage has been dissolved by way of divorce and now there is no relationship between the petitioner and the respondent. The respondent further contended that, the marriage of the petitioner with the respondent was solemnized on 30.06.1997 at Sri.Dharmasthala Manjunathaswamy Temple as per Hindu customs and rituals and out of their wed-lock they have got two children i.e., one son and one daughter who are now major. The respondent is presently working as teacher at Government Higher Primary School, Bilikere Hobli, Hunsur Taluk. The petitioner continuously subjected the respondent to mental and physical cruelty and by obtaining bank loan the petitioner made the respondent liable to pay the loan. In the month of March – 2015 the petitioner left the respondent by developing illicit relationship with one woman and as such the

respondent filed the petition before this court in MC No.25/2019 seeking divorce under Section 13(1)(i)(ia) and (ib) of Hindu Marriage Act. In the said petition, the petitioner intentionally not received the notice and he remained absent before this court and as such on 07.11.2021 the court granted the decree of divorce and inspite of knowing it the petitioner filed this petition in order to cause hardship to her. Hence, prayed to dismiss the petition with costs.

5. In order to prove the case the petitioner stepped into the witness box and examined himself as PW1 and he got marked totally 12 documents as per Ex.P1 to Ex.P12. On the other-hand the respondent stepped into the witness box and examined herself as RW1 but she has not produced any documents.

6. Thereafter, heard arguments addressed by learned counsels for the petitioner and the respondent and perused the case papers. After hearing the arguments and on perusal of the case papers the points that arise for consideration are as hereunder:

### **POINTS**

1. Whether the petitioner has made out sufficient grounds to set aside the exparte judgment and decree passed by this court in MC No.25/2019 dated 11.11.2021?
2. What order?

7. The findings of the above points are as hereunder:

Point No.1: In the Affirmative.

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

### **REASONS**

8. **Point No.1:** The petitioner is before this court by filing this petition under Order IX Rule 13 of CPC to set aside the exparte judgment and decree passed by this court in MC No.25/2019. It is the definite case of the petitioner that, prior to filing MC No.25/2019 the respondent has issued a legal notice to him by mentioning his wrong address and later it came to his knowledge and as such he had obtained the copy from the post office and issued reply notice stating that, the address mentioned in the said notice issued by the respondent herein is false and he has mentioned his correct address in the said reply notice. In spite of it the respondent by mentioning the same address has filed the petition in MC No.25/2019 seeking decree of divorce against the petitioner on the ground of cruelty and desertion. The petitioner specifically alleged that, without following the proper procedure for service of notice upon him, the respondent obtained the decree of divorce. On the other-hand the respondent contended that, the address of the petitioner mentioned in the cause title of the petition in MC No.25/2019 is proper and correct address and in order to harass her the present petition is filed.

9. It is an admitted fact that, the petitioner and the respondent were legally wedded husband and wife and it is also an admitted fact that, their marriage was solemnized on 30.06.1997 at Sri.Dharmasthala Manjunathaswamy Temple as per Hindu customs and rituals and it is also an admitted fact that, out of their wed-lock they have got one son and one daughter who are now major. The petitioner in order to substantiate the case got examined as PW1 and in the chief-examination affidavit he has reiterated the petition averments. In the further chief-examination he got marked the certified copy of the judgment passed by this court in MC No.25/2019 dated 11.11.2021 as per Ex.P1. Ex.P2 is the certified copy of the decree in MC No.25/2019, Ex.P3 is the certified copy of the petition in MC No.25/2019, Ex.P4 is the certified copy of the order-sheet in MC No.25/2019. As per these documents it is an admitted fact that, the respondent herein filed petition against the petitioner herein under Section 13(1)(i-a) and (i-b) of Hindu Marriage Act seeking the decree of divorce on the ground of cruelty and desertion. As per Ex.P1 and Ex.P2 documents the said petition came to be allowed and the marriage between the petitioner and the respondent herein dated 30.06.1997 has been dissolved by a decree of divorce. On going through Ex.P1 it shows that, the judgment was passed exparte. The petitioner herein who is respondent in MC No.25/2019 has been placed exparte.

10. Now it is very much necessary to go through Ex.P4 which is the certified copy of entire order-sheet in MC No.25/2019. As per this document the petition came to be registered on 26.09.2019 and on 16.11.2019 this court ordered for issuance of notice to the respondent who is the petitioner in this case. As per the order-sheet dated 17.12.2019 it is mentioned that, PF and RPAD furnished, issue notice to respondent through RPAD and the case was posted on 24.12.2020. As per the order-sheet dated 24.01.2020 it is mentioned that, the notice to respondent unserved as no such address. Again on the same day the notice has been reissued to the petitioner herein through RPAD and it is mentioned that, PF and RPAD not furnished, hence not issued. Again the case was posted on 20.02.2020 and on the said date the respondent herein filed an application under Order 5 Rule 20 of CPC for issuance of notice to the respondent through affixture and the said application came to be allowed and this court ordered for issue of notice to the petitioner herein by way of affixture and the affixture should be on or before 20.03.2020 and the date for appearance of the petitioner herein was fixed on 23.04.2020. Thereafter, due to SOP for COVID-19 the steps were not taken. On 15.01.2021 again it is mentioned in the order-sheet that, advocate for petitioner sought for issuance of paper publication, accordingly office to issue notice to the petitioner herein by way of affixture

and affixture should be on or before 03.02.2021 and appearance of petitioner herein has been fixed on 06.03.2021.

11. At this juncture this court would like to mention that, on 20.02.2020 as per the order-sheet the respondent herein maintained an application under Order 5 Rule 20 of CPC for affixture. It was issued and thereafter, due to COVID-19 there is no service of affixture. As per the order-sheet dated 15.01.2021 in the first portion it is mentioned as notice through paper publication. But later portion of the order-sheet dated 15.01.2021 shows that, the affixture has been re-issued. By going through the words in the order-sheet it appears that, again affixture has been re-issued to be affixed on or before 03.02.2021. On 06.03.2021 it is mentioned in the order-sheet that, advocate for petitioner sought for issuance of paper publication. Hence, again notice was ordered through affixture only and the affixture should be on or before 19.03.2021. However, in the office note it is mentioned that, paper draft was received. But no where in the order-sheet dated 06.03.2021 and 05.01.2021 it is mentioned that, the respondent herein had made an application under Order 5 Rule 20 of CPC for substitute service by way of paper publication. But the earlier application was filed for affixture. However, again the court has issued affixture. However on 21.04.2021 the respondent herein came up with a memo with paper publication and on the basis of said paper publication

the petitioner herein has been placed exparte. At this juncture it is very important for this court to note that, earlier in the initial stage the court has issued notice to the respondent through RPAD which returned with no such address and again the RPAD was reissued but the respondent herein has not chosen to issue notice to the petitioner by way of RPAD. However, she made an application for affixture and it was also not complied by the respondent herein and she straight away came up with paper publication. This creates some confusion in the mind of the court about the procedure followed for service of notice upon the petitioner herein.

12. Ex.P5 is the certified copy of the marriage invitation card, Ex.P6 is the notice issued to the petitioner herein by the respondent herein dated 31.07.2019. In this the address of the petitioner herein is mentioned as Suresh.M.B., S/o Bomregowda, C/o Ananda Bhairaveshwar Nilaya (Angadi Mane), No.125/2, Hootagalli Village, Main Road, Mysuru Taluk, Mysuru District. The petitioner also produced the certified copy of the returned postal cover i.e., Ex.P7 and as per this document it is mentioned as refused, but the order-sheet shows that, the notice was returned as no such address. Ex.P8 is the certified copy of the reply notice given by the petitioner herein to the respondent wherein in the second para itself the petitioner herein mentioned as hereunder:

*At the outset in order to create cause of action for the purpose of dissolving the marriage between you and my client you have got issued a false notice to a false address.*

13. In para No.3 of the said notice it is mentioned that, my client was able to get the copy of the notice through one person relating to Ananda Byreshwari Nilaya, who happened to be known to my client wherein my client is residing with you in house No.441, Haranjikate Road, Hootagalli, Mysuru. It is very important to note that, in this petition the petitioner mentioned his address as M.B.Suresh, Aged about 65 years, S/o Bommaraya Gowda, Retired Head Master, No.441, Haranjikere (Kate Road), Hootagahalli, Mysuru. Therefore, it is very much clear that, in the initial stage itself the petitioner has mentioned his address in MC No.25/2019 by issuing reply notice to the respondent. The said Ex.P8 notice has been served upon the respondent herein but she again mentioned the address mentioned in Ex.P6 notice in the petition i.e., MC No.25/2019. Ex.P9 is the endorsement given by police, Ex.P10 is the certified copy of returned postal cover in MC No.25/2019, Ex.P11 is the returned summons and Ex.P12 is the certified copy of the memo.

14. Now it is necessary to go through the cross-examination of both PW1 and RW1. In the cross-examination PW1 deposed that, the respondent is his wife, Chethan and Chaithra are his children and he has admitted that, before

filing MC No.25/2019 he had received a notice from the respondent and he had issued reply notice. He has not produced any documents to show that, he is residing in the address mentioned in the cause title of this petition. It is his specific evidence that, he is giving Rs.5,000/- rent and advance of Rs.30,000/- but no rent agreement is entered between them. He has also deposed that, in the year – 2022 November he has vacated said house and denied the suggestions that, at any point of time he is residing in the said house. He has admitted that, now he is retired teacher and he is taken Yellow Board Innova Car and running it for hire. He has denied the suggestion that, by the side of his house he is parking the vehicle and it is his specific evidence that, he is parking vehicle somewhere else by giving rent of Rs.1,000/-.

15. PW1 has denied the suggestion that, the name of house owner is Anand and it is denied that, the said house is situated at Byreshwari Nilaya, Hootagalli. He has also denied the suggestion that, he was residing in the said address along with one women with whom he has got illicit relationship. He has received the notice when the post office official called him over phone. In the further cross-examination PW1 has been confronted with some photos and he has admitted that, the photos belongs to him but the persons in the said photo does not known to him. He has also denied that, in order to cause hardship to the respondent he has filed the petition. In the

chief-examination affidavit RW1 reiterated the petition averments and it is her specific evidence that, after filing of MC No.25/2019 sufficient notice has been issued to the petitioner herein but he intentionally remained absent and not appeared before the court and she has obtained exparte decree of divorce.

16. In the cross-examination RW1 deposed that, she is working as a teacher and in MC No.25/2019 she has not given the address of her husband as House No.441, Haranjikere (Kate) Road, Hootagalli, Mysuru. She has produced the document at the time of giving evidence in MC No.25/2019. She has also admitted that, she has issued the notice to the petitioner herein before filing the said petition to the address Anand Byrevashwara Nilaya, (Angadi Mane) No.128/2, Hootgalli Village, Main Road, Mysuru Taluk. She has also admitted that, her husband has given Ex.P8 reply notice and she has read the same. She has also deposed that, in the reply notice the petitioner has given his proper address and also deposed that, he has contended that the address mentioned in Ex.P8 is not proper. RW1 admitted the suggestion that, in Ex.P8 the petitioner has mentioned his correct address as M.B.Suresh, Aged about 65 years, S/o Bommaraya Gowda, Retired Head Master, No.441, Haranjikere (Kate Road), Hootagahalli, Mysuru and it is her further evidence that, she has given the said address to her counsel in MC No.25/2019

and she has admitted that, notice has not been issued to the said address. This admission from the mouth of the respondent clearly shows that, proper notice has not been served upon the petitioner herein in MC No.25/2019.

17. On going through the cross-examination of RW1 she has also admitted that, she filed an IA under Order 5 Rule 20 of CPC for affixture, but not taken the said steps, but she has taken paper publication. She has denied the suggestion that by giving false address she obtained ex parte decree of divorce. From the above said oral as well as documentary evidence produced by the petitioner and the respondent it is very much clear that, the address shown by the respondent herein in MC No.25/2019 is not correct address of the petitioner herein. It is her own admission that, the petitioner is not residing in the address mentioned by her in the cause title of the petition in MC No.25/2019. Therefore, there is no proper service of notice upon the petitioner herein in respect of MC No.25/2019.

18. Now it is necessary to look into the provision of CPC under Order IX Rule 13 which has been invoked by the petitioner which reads as hereunder:

**Order IX Rule 13 CPC**

*Setting aside decree ex-parte against defendant.*

*In any case in which a decree is passed ex-parte against a defendant, he may apply to the court by which the decree was passed for*

*an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:*

*Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:*

*Provided further that no Court shall set aside a decree passed ex-parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.*

**Explanation.**

*Where there has been an appeal against a decree passed ex-parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex-parte decree.*

19. Therefore, Order IX Rule 13 of CPC provides of setting of ex parte decree if the petitioner has shown sufficient reason about non-service of notice to him. In this case, at the earliest point of time i.e., when the petitioner has received legal

notice before filing of the petition, he has specifically stated that, the address mentioned in the said notice is not correct and he has given his correct address in the reply notice. Furthermore, the petitioner specifically stated that, he came to know about the notice through one person called Ananda and on such information he received copy of the notice from the post office. This fact has not been denied by the respondent. The petitioner by producing cogent oral and documentary evidence has proved that, the notice in MC No.25/2019 was not properly addressed to him and was not properly served upon him. As such it is very much necessary to set aside the exparte judgment and decree passed by this court in MC No.25/2019. The petitioner has shown sufficient cause for setting aside the exparte judgment and decree passed by this court in MC No.25/2019. Accordingly, point No.1 is answered in the Affirmative.

20. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

### **ORDER**

The petition filed by the petitioner under Order IX Rule 13 of CPC is hereby allowed.

Accordingly, the exparte judgment and decree passed by this court in MC No.25/2019 dated 11.11.2021 is hereby set aside and the petitioner herein is given an

opportunity to defend the said petition by filing his objection statement.

The parties to the petition are hereby directed to appear before the court in MC No.25/2019 on 05.06.2026.

Office is hereby directed to restore the said petition.

(Dictated to the Stenographer, transcribed and computerized by him on the computer, transcript corrected and pronounced by me in the open court on this the 15<sup>th</sup> day of April, 2026.)

Sd/-

**(Anitha)**

Prl.Senior Civil Judge and JMFC,  
Hunsur.

### **ANNEXURE**

#### **List of witnesses examined on behalf of the petitioner:**

PW1 : M.B.Suresh

#### **List of documents marked on behalf of the petitioner:**

Ex.P1 : Certified copy of Judgment in MC  
No.25/2019  
Ex.P2 : Certified copy of Decree in MC  
No.25/2019  
Ex.P3 : Certified copy of petition in MC  
No.25/2019  
Ex.P4 : Certified copy of order-sheet in MC  
No.25/2019  
Ex.P5 : Certified copy of marriage invitation  
Ex.P6 : Certified copy of legal notice

Ex.P7 : Certified copy of returned postal cover  
Ex.P8 : Certified copy of reply notice  
Ex.P9 : Certified copy of endorsement  
given by police  
Ex.P10 : Certified copy of returned  
postal cover  
Ex.P11 : Certified copy of notice  
Ex.P12 : Certified copy of memo.

**List of witnesses examined on behalf of the respondent:**

RW1 : H.N.Sunitha

**List of documents marked on behalf of the respondent: -NIL-**

Sd/-

**(Anitha)**

Prl.Senior Civil Judge and JMFC,  
Hunsur.