

KAMS510129242022



**IN THE COURT OF II ADDL. CIVIL JUDGE AND
JMFC., NANJANGUD, MYSURU**

Present: Kruttika.P.Pawar

B.E.,LL.B.,LL.M (IP&Tech Law).

**II Addl. Civil Judge & JMFC,
Nanjangud**

Dated on this 02nd day of June 2026.

1. Misc/27/2022

Plaintiff/s :

1. Kempalingappa S/o Ramappa,
aged about 71 years,
2. Girish @ Giriprasad,
S/o Kempalingappa,
Aged about 41 years,
3. Savitha W/o Girish @ Giriprasad,
Aged about 33 years,

All are R/at Kasuvinahalli village,
Kasaba Hobli, Nanjangud Taluk.

(By Sri. N.M., Adv.,)

-Vs-

Defendant/s:

1. Latha C S W/o Suresh,
Aged about 53 years,
R/at House no.2870, 4th cross,

1st main, Chamundipuram, Mysore

2) Siddashetty,
S/o late Puttamadashetty,
aged about 66 years,
R/at House no.219, 11th cross,
3rd Vinayaka road, T K Layout,
Janathanagar, Mysore.

3) Nagendra,
S/o late Venkataiah,
aged about 56 years,
R/at Door no.142, 7th cross,
Navilu road, Kuvempu nagar,
Mysore.

(By Sri. V.G.S, Adv.,)

**II Addl. Civil Judge & JMFC.,
Nanjanagudu**

:- J U D G M E N T:-

The present petition is filed by the petitioners under Order IX Rule 13 of the Code of Civil Procedure seeking to set aside the ex parte judgment and decree dated 18/07/2022 passed in O.S. No. 33/2019 and to restore the suit in its original form. The petitioners have also filed an application under Section 5 of the Limitation Act seeking condonation of delay in filing the petition.

2. Brief facts of the case are as under :

The respondents herein had instituted O.S. No.33/2019 against the petitioners seeking recovery of advance sale consideration amount along with interest and costs.

It is the case of the petitioners that though summons in the suit were served upon them, they could not effectively contest the proceedings due to the serious illness and advanced age of the first petitioner. According to the petitioners, the first petitioner was bedridden and suffering from heart ailments for several years and had undergone surgery and continuous treatment.

The petitioners further contend that the second and third petitioners were entirely occupied in taking care of the first petitioner and arranging medical treatment, resulting in severe financial hardship. It is also their contention that during the Covid-19 pandemic period, due to lockdown restrictions, fear of infection, and limited functioning of courts, they were unable to properly contact their advocate and attend the court proceedings.

According to the petitioners, after the situation improved and upon contacting their advocate, they came to know about the ex

parte judgment and decree passed against them in O.S. No. 33/2019. Thereafter, they filed the present petition seeking setting aside of the ex parte decree and restoration of the suit. The petitioner along with the petition has filed I.A.No.I under Section 5 of the Limitation Act, seeking condonation of delay of 98 days in filing the petition.

3. The respondents appeared and filed objections denying the averments made in the petition. The respondents contend that the petitioners were fully aware of the proceedings and had intentionally remained absent in order to delay the matter. It is further contended that summons had been duly served upon the petitioners and even prior to filing of the suit, legal notice had been issued and replied through advocate.

The respondents denied the allegations regarding illness, financial hardship, and inability to attend court due to the Covid-19 pandemic. According to them, no proper explanation has been offered for the delay and the petition is filed only to obstruct execution proceedings initiated in Execution Petition No.13/2023.

4. In support of their case, the second petitioner examined himself as PW-1 and produced documents marked at Ex.P-1 to Ex.P-3.

5. On behalf of the respondents, respondent No.2 examined himself as RW-1.

6. Heard the arguments of both sides and perused the records.

7. The following points arise for consideration:

1. Whether the petitioners have shown sufficient cause and made out grounds to allow the petition?
2. Whether the petitioners have shown sufficient cause to condone the delay in filing the petition under Section 5 of the Limitation Act?
3. What order?

8. The findings of this Court on above said points are as under;

Point No.1 :- In Affirmative

Point No.2 :- In Affirmative

Point No.3 :- As per final order for the following

-REASONS-

9. Point no.1 and 2:- Since both these points are interconnected and arise out of the same set of facts, they are taken together for common consideration in order to avoid repetition of discussion.

The petitioners have approached this Court seeking setting aside of the ex parte judgment and decree passed in O.S. No.33/2019 and for condonation of delay in filing the present petition. The principal ground urged by the petitioners is that though they were aware of the pendency of the suit proceedings, they were prevented by sufficient cause from appearing before the Court and effectively contesting the matter due to the serious illness of the first petitioner, family difficulties, financial hardship, and the Covid-19 pandemic situation.

10. In order to substantiate their case, the second petitioner has examined himself as PW-1. In his examination-in-chief, PW-1 has stated that, petitioner no 1 was seriously ill

and bedridden. According to PW-1, the first petitioner was continuously under medical treatment needing constant care and attention.

11. PW-1 has further deposed that himself and petitioner no 3 were attending to their father and because of continuous medical treatment and financial difficulties, they were unable to properly engage an advocate and contest the proceedings. According to him, due to these circumstances coupled with the Covid-19 pandemic and restrictions prevailing during the relevant period, the petitioners could not effectively participate in the suit proceedings.

12. PW-1 has produced certified copies of the order sheet, judgment, and decree in O.S. No.33/2019, which are marked as Ex.P-1 to Ex.P-3 respectively.

It is true that during cross-examination, PW-1 admitted that summons in the original suit had been duly served upon them but that they were unaware of the proceedings. He also admitted that no appeal had been filed against the judgment

and decree and that no stay order had been obtained in the execution proceedings.

Further, PW-1 admitted that no documentary evidence had been produced along with the petition regarding illness of father or delay. Only upon serving the arrest notice, he was given to understand about the decree that was passed against him. He also admitted that no specific documents had been produced to show about the reason for delay in filing this petition. Further they have also not filed any documents to show closure or non-functioning of courts during the Covid-19 pandemic period.

13. The learned counsel for the respondents has strongly relied upon these admissions to contend that the petitioners were fully aware of the proceedings and had deliberately remained absent before the Court. However, merely because summons were served and the petitioners had knowledge of the proceedings, the petition under Order IX Rule 13 CPC cannot be rejected automatically if sufficient cause for non-appearance is otherwise established.

14. The law is well settled that the expression “sufficient cause” appearing under Order IX Rule 13 CPC and Section 5 of the Limitation Act must receive liberal interpretation so as to advance substantial justice. The Court is required to consider whether the absence of the party was intentional, deliberate, or due to circumstances beyond control. As per Article 123 of Limitation Act, period of limitation to file application u/Order IX Rule 13 of C.P.C. for setting aside ex-parte decree is 30 days. Where the summons or notice was not duly served, the period of limitation has to be counted from the date when the applicant had the knowledge of the ex-parte decree. It is also relevant that, the respondents have not filed objection to the IA no.1.

15. In the present case, the evidence of PW-1 discloses that the first petitioner is an elderly person aged about 71 years and had been suffering from illness for nearly 10 to 12 years. During cross-examination, PW-1 consistently maintained that the first petitioner had undergone heart surgery and was under continuous treatment. Though medical

records were not initially produced, the oral testimony regarding the illness of the first petitioner has remained substantially unshaken.

Further, RW-1 in his cross-examination admitted that the first petitioner was an elderly person. Though RW-1 denied several suggestions put to him, he admitted that he had no personal knowledge regarding the health condition of the first petitioner and the family circumstances of the petitioners.

16. This Court cannot ignore the fact that the relevant period overlaps with the Covid-19 pandemic period. It is a matter of public and judicial notice that due to nationwide lockdowns, restrictions on movement, fear of infection, and limited functioning of courts, litigants across the country faced considerable hardship in prosecuting cases and coordinating with advocates. Though PW-1 admitted that no specific documentary proof was produced regarding closure of courts, the existence and impact of the Covid-19 pandemic is an undisputed historical fact and does not require formal proof.

17. The respondents have contended that the petitioners intentionally avoided the proceedings only to delay repayment of money and obstruct execution of the decree. However, except making suggestions during cross-examination, no independent material has been placed before the Court to establish malafide intention or deliberate negligence on the part of the petitioners.

18. On the contrary, the explanation offered by the petitioners appears natural and probable considering the age and health condition of the first petitioner, the financial and family difficulties pleaded by them, and the extraordinary circumstances prevailing during the pandemic period.

No doubt, there are certain lapses on the part of the petitioners. The petitioners ought to have been more diligent in prosecuting the matter and should have produced supporting medical documents at the earliest opportunity. However, procedural law is intended to advance justice and not to defeat substantive rights of parties on technical grounds.

19. The dispute involved in the suit pertains to recovery of substantial amount and the ex parte decree has serious civil consequences upon the petitioners. If the petitioners are denied an opportunity to contest the matter on merits, irreparable prejudice would be caused to them. On the other hand, if the decree is set aside and the suit is restored, the respondents would still have full opportunity to establish their claim by adducing evidence before the Court.

20. The Hon'ble Supreme Court and various Hon'ble High Courts have repeatedly held that matters should ordinarily be decided on merits rather than on technical defaults and that unless gross negligence or malafide conduct is established, liberal approach should be adopted while considering applications under Order IX Rule 13 CPC and Section 5 of the Limitation Act.

21. Having regard to the entire oral and documentary evidence on record and considering the facts and circumstances of the case in their proper perspective, this Court is of the considered opinion that the petitioners have

shown sufficient cause for their non-appearance before the Court in O.S. No.33/2019 and have satisfactorily explained the delay in filing the present petition. Accordingly, Point Nos.1 and 2 are answered in the **Affirmative**.

22. **Point No.3:-** For the reasons stated in above points this Court proceed to pass the following ;

ORDER

I.A.No.I filed by the petitioner under Sec.5 of Limitation Act is hereby **allowed on cost of Rs.1,000/-**.

Accordingly, the petition filed by the petitioner under Order IX Rule 13 of C.P.C. is hereby **allowed on cost of Rs.1,000/-**.

Consequently, the ex-parte judgment and decree passed in O.S.No.33/2019 dated: 18/07/2022 is hereby set aside and suit is ordered to be restored on its original file.

Parties to the petition are directed to appear before the court in O.S.No.33/2019 on 18/07/2022 without expecting any notice from the court.

Office to restore the suit forthwith and place the case file before the court on 30.07.2026.

(Dictated to the Stenographer directly on the computer, typed by her, printout taken by her and corrected by me and then pronounced by me in the open court on this the 02nd day of June 2026)

(Kruttika P. Pawar)
II Addl. Civil Judge & JMFC.,
Nanjanagudu.

ANNEXURE

1. List of witnesses examined by the petitioner :

PW.1 - Girish @ Giriprasad

2. List of documents marked by the petitioner:

Ex.P1 – 3 : Certified copies of the order sheet, judgment, and decree in O.S. No.33/2019

3. List of witnesses examined by the respondent:

DW.1- Siddashetty

4. List of documents marked by the respondent:

-NIL-

(Kruttika P. Pawar)
II Addl. Civil Judge & JMFC.,
Nanjanagudu.