

KAMS610001462022



**IN THE COURT OF THE I ADDITIONAL CIVIL
JUDGE AND JMFC., AT PERIYAPATNA**

Present: **Smt. Shwetha.J. B.Com, L.L.B.,**
Addl. Civil Judge & JMFC.,

Dated: this 10th Day of April 2026

Misc.No.3/2022

PETITIONER : **Karnataka Bank Ltd.**, a banking,
Company Incorporated under Indian
Companies Act, 1913, having its
Registered Office & Head Office
at Mahaveera Circle, Kankanady,
Mangalore- 575002 and a Branch
office amongst other at Hunsur Town,

Represented by its Manager.
(By Sri.CSS.,Advocate)

V/s.,

RESPONDENTS: : 1. Sri.S.Lokesh,
S/o Subbegowda,
Aged about 47 years,
2. Sri.Shivakumar,
S/o Subbegowda,
Aged about 23 years,
3. Rajini,
D/o Subbegowda,
Aged about 20 years,

Dead L.Rs already on record.

4. Rashmi,
D/o Subbegowda,
Aged about 19 years,
All are R/at
M.Shettyahalli village,
Ravanduru Hobli,
Periyapatna Taluk.
5. H.Shivalingegowda
S/o Hanumegowda,
Aged about 50 years,
R/at Hanagodu Hobli,
Hunsuru Taluk,
6. Padma W/o S.Lokesh
Aged about 41 years,
R/at M.Shettyhalli Village,
Ravanduru Hobli,
Periyapatna Taluk.

[By Sri.KJM, Adv]., for R.1 & 6)
(R.2,3,4 & 5 - Absent)

ORDERS

The Petitioner Bank has filed this petition under Order 9 Rule 4 of CPC., praying this Court to call for the records in FDP.No.10/2018 on the file of this Court to set aside the dismissal order dated 27.10.2021 and restore the petition.

2. The brief facts of the petition averments as**follows:-**

The petitioner had filed a suit in O.S.No.48/2017 against the Respondents for recovery of amounts due under a secured debt. The suit of the plaintiff was decreed and a Preliminary Decree was passed on 26.02.2018. This Court had also fixed a period of three months to fulfill the decretal amount from the date of decree. In spite of lapse of the period fixed, the respondents have not paid the decretal amounts and hence a final decree petition was filed in FDP.No. 10/2018 on the file of this court on 21.06.2018.

3. It is further submitted that while the suit in O.S.No.48/2017 was pending, the third respondent by name Rajini D/o Subbegowda passed away and since the Respondents No.1, 2, 4 & 6 were already on record and memo filed to the effect that no fresh steps as against the L.R's of the 3rd defendant/Respondent

was necessary. That since the name of Respondent No.3 was included in the judgment and preliminary decree in the cause title, her name was entered in the Final Decree Petition also, stating that she is dead. This fact is very much visible on the face of the petition itself.

4. It is further submitted that inspite of the said facts, upon issue of notices to the respondents in FDP.No.10/2018, again it was reported that the Respondent No.3 was dead and this Court had posted the case for steps against the L.R's of the Respondent No.3. As such again a memo dated 23.08.2019 was filed before the court reporting that the death of the Respondent No.3 was recorded in the original suit itself, that all her legal heirs are already on record. That in view of the mentioning of her name in the preliminary decree, her name is included in the cause title, that since all her legal heirs are already on record, no further steps arise as against the deceased

3rd respondent. This fact of filing of the memo was recorded by this court on 23.08.2019. Still the Court went on posting the case for steps. Again the above said facts were brought to the notice of this Court on 18.03.2021 and this Court has recorded the said fact in the order sheet. Thereafter the case was posted for hearing the respondents.

5. It is further submitted that on 08.09.2021, this Court ordered for issue of Court notice to the petitioner returnable by 24.09.2021 and no court notice was served. Again on 24.09.2021, the stage was for issue of court notice to petitioner. In spite of it this Court recorded that petitioner is absent, no representation made out and hence for steps by 27.10.2021.

6. It is further submitted that on 27.10.2021, this Court without properly appreciating its own order sheet, dismissed the petition for default. This Court did not appreciate the fact that the petitioner was

diligent in prosecuting the matter and the stage was for hearing the respondents on the memo filed by the petitioner bank. This court ought to have either posted the case for orders or for evidence of petitioner Bank.

7. It is further submitted that there is no negligence on the part of the petitioner. The suit is for recovery of public money. The dismissal of the petition for default has caused a hardship and injustice to the petitioner. There is no fault on the part of the petitioner and hence the petition for restoration of the final decree petition in FDP.No. 10/2018 on the file of this court.

8. After due service of notice the respondent No.1 and 6 have appeared before the court through their counsel but not filed the objections. The Respondents No.2, 4 and 5 remained absent. The notice issued to the Respondent No.3 returned as dead.

9. The Manager of petitioner Bank was examined as PW1 and got marked the documents at Ex.P1 and 2. The Respondents have not adduced any evidence.

10. The Counsel for the Petitioner has filed written arguments. The arguments of Respondents taken as nil as they remained absent.

11. Now the following points arise for consideration of this Court.

Point No.1: *Whether the petitioner Bank has made out grounds to allow the petition?*

Point No.2: *What Order?*

12. The findings of this Court on the above said points are as under:

Point No.1: In the Affirmative

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

REASONS

13. **Point No.1:** It is pertinent to note that to restore the petition under Order 9 Rule 4 of CPC., the provision says that the plaintiff may bring fresh suit or Court may restore suit to file where a suit is

dismissed under Rule 2 or Rule 3, the plaintiff may (subject to the law of limitation) bring a fresh suit or he may apply for an order to set dismissal aside and if he satisfies the Court that there was sufficient cause for such failure as is referred to in Rule 2 or for his non appearance, as the case may be, the Court shall make an order setting aside the dismissal and shall appoint a day for proceeding with the suit.

14. In this petition, the petitioner Bank mainly urge its ground that in the preliminary decree itself the defendant No.3/Respondent No.3 was shown as dead. As the cause title of the preliminary decree indicates the name of the defendant No.3/Respondent No.3, her name shown as party, but the cause title of the FDP itself shows the death of Respondent No.3. In this regard, memo was also filed before the Court in FDP.No.10/2018. In spite of that the FDP.No.10/2018 was dismissed for default.

15. The Manager of the Petitioner Bank is examined as PW.1 and got marked the certified copy of the petition in FDP.No.10/2018 at Ex.P.1 and order sheet at Ex.P.2.

16. The perusal of Ex.P.1 makes it clear that at the time of filing the FDP petition itself the Respondent No.3 Mis.Rajini D/o Subbegowda, aged about 20 years shown as dead. The last page of the Ex.P.1 indicates the filing of memo dated 23.08.2019 in the said petition stating that *“the Respondent No.3 in the above case is dead and the same was reported in the original suit itself and the same was recorded therein. Further, Respondents No.1,2 and 4 are the only legal heirs left behind by the Respondent No.3. In view of the mentioning of her name in the Preliminary decree passed by this Hon’ble Court her name is included in cause title in the above case. Since she is already dead and her legal heirs are already on records no steps arise as against the deceased*

Respondent No.3 in the above case.” The filing of said memo is found place in Ex.P.2 order sheet dated 23.08.2019, which shows that “*Sri.B.N. filed Memo reporting the R.3 is dead and already reported in Original Suit and the R.1,2 and 4 are the L.Rs. For steps by 11/10.*” Then the case posted to steps on further hearing dates. That on 18.03.2021 indicates about hearing of Petitioner and posted for hearing the Respondent. Again on 15.04.2021 the Respondent remained absent and posted to hear the Respondent to 05.08.2021. On 08.09.2021 Court notice issued to the Petitioner. But on 27.10.2021 the petition was dismissed for default for non taking steps.

17. That the documents on record clearly indicates that despite of the Respondent No.3 was mentioned as dead in the cause title of FDP.No.10/2018 and subsequently filing memo specifying the death of Respondent No.3 and the Respondent No.1, 2 and 4 already on record, the suit

dismissed for not taking steps on 27.10.2021. On the date of dismissal for default, the petitioner in this petition has not stated that why he was not present and represented by his Counsel. This Court is of the opinion that the petition could not have been dismissed for default as the petitioner Bank had made attempts satisfying the Court about non taking of steps against the deceased defendant No.3/Respondent No.3. Further, the petitioner is a Banking Sector and working for public at large and the suit was filed for recovery of public money. As such, if the petition is not restored in its original file, the plaintiff Bank would suffer more than the Respondents. More over, the Respondents who appeared before this Court have failed to challenge the petition averments by filing their objections and so also cross examining the PW.1 appeared for petitioner Bank. ***Hence, Point No.1 is answered in the Affirmative.***

18. Point No.2: For the aforesaid discussion on Point No.1, this Court proceeds to pass the following:

ORDER

The petition filed by the petitioner Bank u/O IX Rule 4 of C.P.C. is hereby allowed on cost.

The FDP.No.10/2018 is restored.

Office is directed to restore the FDP.No.10/2018 in C.I.S. and put up the records before the board on 11.06.2026.

Both the parties are directed to appear before this court on 11.06.2026 without expecting any notice.

(Dictated to the stenographer on computer, then corrected, pronounced and then signed by me in the open Court on this the 10th Day of April, 2026)

(Shwetha.J)

I Addl. Civil Judge and JMFC
Periyapatna.

ANNEXURE

Witnesses examined on behalf of Petitioner:

PW1 : Raghu.L.C

Documents marked on behalf of the Petitioner:

Ex.P1 : Certified copy of the petition in
FDP.No.10/2018

Ex.P2 : Certified copy of the order sheet
in FDP.No.10/2018

**Witness examined and documents marked on
behalf of the Respondents:-**

-Nil-

**(Shwetha.J)
I Addl. Civil Judge and JMFC
Periyapatna**