

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
PRINCIPAL J.M.F.C., TARIKERE**

***Present : SRI M.C. NANJE GOWDA, B.A.L., LL.M,
Senior Civil Judge & Prl. JMFC.,
Tarikere.***

Dated this 8th day of November 2019

C. MISC. NO.2/2019

Petitioner/s: State Bank of India, Ajjampura Branch,
Represented by its Manager,
M.Shashikala W/o K.Vijayakumar, Aged
about 41 years, R/o S.B.I., Ajjampura.

[By Sri. Suresh Jakanachar, Advocate]

Versus

Respondent/s: 1. Basamma W/o Marudappa, Aged
about 65 years, Agriculturist, R/o
Channapura Village, Ajjampura Hobli,
Tarikere Taluk.

2. G.M.Sathisha S/o Muddappa, Aged
about 40 years, Agriculturist, R/o
Gowrapura Village, Ajjampura Hobli,
Tarikere Taluk.

**[Respondent No.1 and 2 are placed
exparte]**

ORDER

This petition is filed by the petitioner-Bank under Order IX Rule 4 and 9 r/w Section 151 of CPC for setting aside the order passed by this court in S.C.No.27/2017 dated 27.06.2018 and restore the same to its original file.

2. The brief case of petitioner that it had filed S.C.No.27/2017 seeking recovery of money against the respondents herein. When the suit was at the stage of evidence, the manager who instituted the suit was transferred and post of manager in the petitioner bank became vacant. Therefore, it could not lead the evidence well in time. Therefore, the suit was dismissed for non-prosecution on 27.06.2018. The non-appearance of the manager when the suit was dismissed, was not intentional. But for the bonafide reasons stated supra. Hence, this petition.

3. The petitioner in order to prove its case, has examined its manager-Ujjwal Anand as PW.1 and marked one Document as Ex. P1 and closed evidence.

4. Heard arguments of learned counsel for the petitioners. I have perused the documents on record.

5. The points that arise for my consideration are:

4. Whether the petitioner bank proved that there was sufficient reason for non-appearance of its manager on dated S.C.No.27/2017 dated 27.06.2018?

5. What order?

6. My answer to the above points are:

Point No.1 : In the Affirmative;

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

REASONS

POINT NO.1:

7. The petitioners in order to prove its case, has examined its manager-Ujjwal Anand as PW.1 and marked one Document as Ex. P1. Pw1 has reiterated the contents of the petition in his evidence. He has produced the certified copy of order sheet in S.C.No.26/2017 which discloses that the petitioner bank had filed a suit for recovery of money and it has been dismissed for non-prosecution as the bank has not lead any evidence. Petitioner has specifically averred in the petition as well as in his evidence of Pw1 that the manager who instituted the suit was transferred and post of manager in the petitioner bank became vacant. Therefore, it could not lead the evidence well in time. As the respondents have not appeared in spite of due service of notice issued by this court, they are placed *exparte*. In the

absence of objections and cross examination by the respondents, there are no reasons to disbelieve or discard the version of the petitioner bank and its evidence. Under these circumstances, this court is of the view that the petitioners have made out sufficient ground to set aside the order dated S.C.No.27/2017 dated 27.06.2018 and hence the petitioner bank is entitled for the relief sought in the petition. Hence, I answered Point No.1 in the Affirmative.

POINT NO.2:

08. In the result, this court proceeds to pass the following:

ORDER

The petition filed by the petitioner under Order IX Rule 4 and 9 read with section 151 of CPC is hereby allowed. The order passed by this court in S.C.No.27/2017 dated 27.06.2018 is hereby set aside.

S.C.No.27/2017 is hereby restored to its file and the petitioner directed to appear before this court on 26.11.2018 without fail.

Office to put up SC. NO. 27/17 without fail on that day.

No order as to cost.

(Dictated to the Stenographer, transcribed by her, corrected by me and then pronounced in the open court, on this the 08th day of November 2019.)

Sd/-
(M.C. NANJE GOWDA)
SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.

ANNEXURE**List of witnesses examined on behalf of petitioner/s:**

PW1 : Ujjwal Anand

List of witnesses examined on behalf of Respondent/s:

-NIL-

List of documents marked on behalf of Petitioner/s:

Ex.P1 : C/c of Order sheet in SC.27/2017

List of documents marked on behalf of Respondent/s:

- Nil -

Sd/-

(M.C. NANJE GOWDA)

SENIOR CIVIL JUDGE & PRL. JMFC.,
TARIKERE.