

ITEM NO.1722

COURT NO.9

SECTION IV-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(S). 10020-10021/2018

SRI KRISHNAPPA

APPELLANT(S)

VERSUS

SRI KRISHNAPPA (DEAD) THR. LRS & ORS.

RESPONDENT(S)

(I.A. NO. 136154 AND 136157 OF 2024 TO BE LIST BEFORE HON'BLE JUDGE  
IN CHAMBER ALONGWITH

( IA No. 12849/2023 - APPLICATION FOR SUBSTITUTION  
IA No. 12852/2023 - CONDONATION OF DELAY IN FILING SUBSTITUTION  
APPLN. IA No. 136154/2024 - MODIFICATION  
IA No. 136157/2024 - RECALLING THE COURTS ORDER)  
IA No.154458/2024)

Date : 01-08-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANDEEP MEHTA  
[IN CHAMBER]

For Appellant(s) Mr. G V Chandrashekar, Sr. Adv.  
Mr. N K Verma, Adv.  
Ms. Anjana Chandrashekar, AOR

For Respondent(s) Mr. D P Chaturvedi, Adv.  
Mr. Tarun Kumar Thakur, Adv.  
Ms. Parvati Bhat, Adv.  
Mr. Vivek Ram, Adv.  
Mr. Abhay Choudhary M, Adv.  
Ms. Anuradha Mutatkar, AOR

Mr. Dhawesh Pahuja, AOR

UPON hearing the counsel the court made the following  
O R D E R

IA No.136157/2024 – Application for recalling court's order dated – 23<sup>rd</sup>  
February, 2024

IA. NO. 136154/2024 – Application of modification of order dated 06<sup>th</sup> May,  
2024

1. Heard learned counsel for the parties.
2. The following observations were made in the order dated 23<sup>rd</sup>

February, 2024 passed in Civil Appeal Nos.10020-10021 of 2018 :

“Office report indicates that Ms. Anuradha Mutatkar has moved an application to bring on record the legal heirs of deceased Respondent no.1. Thereafter, respondent nos. 1/1 to 1/3 have put in appearance.

However, service is still incomplete on respondent nos.1/4, 3, 5, 7, 8 and 10. Office has reported that the counsel for the applicant/proposed LR of respondent no.1 has not taken steps for service of notice of the application on such respondents. This onus is on the Appellant’s counsel. By way of last chance, four weeks’ time is granted to the Appellant to serve the unserved respondents. “

3. As per the office report dated 03<sup>rd</sup> April, 2024, the service of notice is complete in the Civil Appeals.
4. The application IA No.136157/2024 is taken up for consideration.
5. The learned counsel for the applicant/appellant has moved this application to recall the order dated 23<sup>rd</sup> February, 2024. It is submitted by learned counsel for the appellant that service of the notice of the appeal is complete on all the respondents.
6. Interlocutory Applications (IA D No. 12849/2023 – Application for substitution and IA D No. 12852/2023 – Condonation of delay in filing substitution application and setting aside abatement) have been filed by Ms. Anuradha Mutatkar, learned counsel for the respondents with a prayer to bring on record one – B. Lakshman Gowda s/o late Byanna as the Lr. of

the deceased respondent No.1 based on a settlement deed.

7. It is contended by learned counsel for the appellant that B. Lakshman Gowda s/o late Byanna is a total stranger to the proceedings and cannot be allowed to come on record by way of this application. He urges that all the parties in the appeal would have a right of being heard on the application and thus, onus of serving of notice of this application would be on the applicant-respondent. He therefore, submits that the observation made by this Court in the order dated 23<sup>rd</sup> February, 2024 that onus of service is upon the appellant, is required to be recalled. Mr. D P Chaturvedi, learned counsel appearing for the applicant in IA D Nos. 12849/2023 and 12852/2023 has vehemently opposed the submissions so advanced.

8. Having considered the submissions advanced at the Bar and after going through the material available on record, I am of the firm opinion that since the process of lodgment of the appeal has been served on all the respondents, the burden to serve the notice of the IA seeking substitution/impleadment of the aforesaid B. Lakshman Gowda s/o late Byanna is upon the applicant and not the appellant.

9. Thus, the order dated 23<sup>rd</sup> February, 2024 passed in Chambers is modified and it is directed that the applicant in IA D Nos. 12849/2023 and 12852/2023 shall be under obligation to get the notices of the applications served on all the respondents.

10. Accordingly, IA Nos.136157/2024 and 136154/2024 stand disposed of.

**IA No.154458 of 2024**

11. Learned counsel for the applicant submits that he may be allowed to effect service on the unserved respondents by paper publication in two daily newspapers one in local language and another in English language.

12. For the reasons mentioned above, the prayer made is accepted. Let process of the application be served on the unserved respondents by publication in terms of the averments made in the application.

13. The proof of publication be filed within six weeks.

14. The application is disposed of.

**(Nand Kishor)**  
**Court Master (NSH)**

**(Geeta Ahuja)**  
**Assistant Registrar-cum-PS**