



CNR: KAHC010168192018

NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 42921 OF 2018 (GM-CPC)

C/W

CIVIL REVISION PETITION NO. 557 OF 2018

IN WP No. 42921/2018

BETWEEN:

SMT. NAGARATHNAMMA
W/O. LATE NANJUNDAIAH. B,
AGED ABOUT 60 YEARS,
NO.90/1-25, 10TH CROSS,
VITTAL NAGARA, 2ND MAIN,
B.M.K. LAYOUT,
BENGALURU - 560 026.

...PETITIONER

(BY SRI. MURALIDHAR H.M, ADVOCATE)

AND:

MUTHOOT FINANCE LIMITED
NO.54/2, BILEKAHALLI,
BANNERGHATTA MAIN ROAD,
BENGALURU - 560 076,
REPRESENTED BY ITS BRANCH MANAGER.

...RESPONDENT

(BY SRI. ANISH JOSE ANTHONY, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO CALL FOR THE

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by
ANNAPURNA G
Location: High
Court of
Karnataka



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RECORDS ON THE FILE OF THE XXIX ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU IN MISC. NO. 810/2014, PERUSE THE SAME, ALLOW THE W.P. QUASH THE IMPUGNED ORDER DATED 7.9.2018 VIDE ANNEX-A PASSED IN MISC. NO. 810/2014 ONLY IN SO FAR AS THE DIRECTION ISSUED TO THE PETITIONER TO DEPOSIT 1/4 OF THE DECRETAL AMOUNT OF RS.11,14,504/- IN THE O.S.NO. 4501/2013 WITHIN ONE MONTH AND ETC.,

IN CRP NO. 557/2018

BETWEEN:

MUTHOOT FINANCE LTD.,
NO. 514/2, BILEKAHALLI,
BANNERGHATTA MAIN ROAD,
BANGALORE - 560 076
REP. BY ITS BRANCH MANAGER.

...PETITIONER

(BY SRI. ANISH JOSE ANTONY, ADVOCATE)

AND:

SMT. NAGARATHNAMMA
W/O SRI NANJUNDAIAH B,
AGED ABOUT 60 YEARS
NO 90/1-25, 10TH CROSS,
VITTAL NAGAR, 2ND MAIN ROAD,
B.M.K LAYOUT, BANGALORE - 560 026.

...RESPONDENT

(BY SRI. H.M. MRALIDHAR, ADVOCATE)

THIS CRP IS FILED UNDER SECTION 115 OF CPC,1908 AGAINST THE ORDER DATED 07.09.2018 PASSED IN MISC.NO.810/2014 ON THE FILE OF THE XIX ADDL.CITY CIVIL AND SESSIONS JUDGE, BANGALORE CITY,ALLOWING THE PETITION FILED UNDER ORDER 9 RULE 13 OF CPC.



CNR: KAHC010168192018

NC: 2026:KHC:50919
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C/W CRP No. 557 of 2018

THESE PETITIONS, COMING ON FOR PRELIMINARY HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

ORAL ORDER

Captioned writ petition is filed by the defendant, calling in question the latter part of the order passed by the learned Judge in Misc.No.810/2014, whereby the miscellaneous petition filed under Order IX Rule 13 of the Code of Civil Procedure, 1908, (for short 'CPC') came to be allowed and the *ex parte* decree was set aside and the suit was restored to its original file, subject to the petitioner/defendant depositing 1/4th of the decretal amount of Rs.11,14,504/-. The petitioner is aggrieved only by the condition so imposed while setting aside the *ex parte* decree and restoring the suit.

2. The connected Civil Revision Petition is filed by the respondent/plaintiff questioning the very order passed by the learned Judge whereby the *ex parte* decree came to be set aside and the suit was restored to its original file.



NC: 2026:KHC:50919
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C/W CRP No. 557 of 2018

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3. Heard the learned counsel appearing for the petitioner in the writ petition and the learned counsel appearing for the respondent/plaintiff. Perused the impugned order and the material available on record.

4. The respondent/plaintiff instituted a money suit seeking recovery of a sum of Rs.11,14,504/-. The petitioner/defendant, though initially entered appearance and engaged a counsel, failed to contest the suit by filing her written statement. Consequently, she was placed *ex parte* and the suit came to be decreed *ex parte* in favour of the respondent/plaintiff.

5. The petitioner thereafter invoked the jurisdiction of the learned Judge by filing Misc.No.810/2014 under Order IX Rule 13 of CPC, seeking setting aside of the *ex parte* decree. The learned Judge, upon consideration of the reasons assigned by the petitioner for her failure to contest the suit, found the same to be sufficient and accordingly, by order dated 07.09.2018, allowed the miscellaneous petition, set aside the *ex parte* decree and restored the suit to its original file. However, while doing so, the learned Judge imposed a condition requiring the



CNR: KAHC010168192018

NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

petitioner to deposit 1/4th of the decretal amount of Rs.11,14,504/-.

6. The condition so imposed is the subject matter of challenge in the present writ petition. This Court, while entertaining the petition, granted an interim order subject to the petitioner depositing a sum of Rs.1,50,000/-. The said interim order has been in operation since the year 2018 and, pursuant thereto, the petitioner has deposited a sum of Rs.1,50,000/-.

7. There can be no quarrel with the proposition that while setting aside an *ex parte* decree and restoring the suit, the Court, having regard to the facts and circumstances of a particular case, may impose appropriate terms and conditions so as to balance the equities between the parties and safeguard the interests of the decree-holder. However, once the Court records a finding that the defendant had sufficient cause for her non-appearance and consequently sets aside the *ex parte* decree, the condition imposed should not be so onerous as to virtually deprive the defendant of the opportunity to contest the suit on merits.



NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

CNR: KAHC010168192018

8. In the present case, the learned Judge has accepted the explanation offered by the petitioner and has consequently set aside the *ex parte* decree. The petitioner is a widow and was aged about 56 years when the order restoring the suit came to be passed. In the peculiar facts and circumstances of the case, this Court is of the view that the condition requiring her to deposit 1/4th of the decretal amount, which works out to a substantial sum, is somewhat onerous. If the petitioner were unable to comply with such condition, the consequence would be that, notwithstanding the *ex parte* decree having been set aside upon acceptance of her explanation, she would effectively be deprived of an opportunity to contest the suit on merits.

9. It is also material to take note of the fact that, pursuant to the interim order granted by this Court, the petitioner has already deposited a sum of Rs.1,50,000/-. Further, it is not in dispute that the respondent/plaintiff continues to retain the gold ornaments furnished as security at the time of availing the loan. The said security constitutes a substantial safeguard for the claim of the respondent/plaintiff.



CNR: KAHC010168192018

NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

In addition, the attachment already ordered by the competent Court can also be continued during the pendency of the suit. These circumstances, taken cumulatively, sufficiently protect the interests of the respondent/plaintiff while, at the same time, enabling the petitioner to effectively contest the suit on merits.

10. This Court is, therefore, of the view that the equities between the parties can be adequately balanced by modifying the condition imposed by the learned Judge and treating the sum of Rs.1,50,000/- already deposited by the petitioner pursuant to the interim order of this Court as sufficient compliance with the condition of deposit. Such a course would neither prejudice the substantive rights of the respondent/plaintiff nor foreclose the petitioner's valuable opportunity to contest the suit, particularly when adequate security continues to be available to the respondent/plaintiff.

11. Insofar as the connected Civil Revision Petition filed by the respondent/plaintiff questioning the order dated 07.09.2018, whereby the *ex parte* decree was set aside and the suit was restored, is concerned, this Court finds no ground to



CNR: KAHC010168192018

NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

interfere. The learned Judge, upon consideration of the explanation offered by the defendant, has exercised the jurisdiction vested in the Court under Order IX Rule 13 of CPC. The mere fact that the petitioner had initially entered appearance through counsel would not, by itself, warrant interference with the finding recorded by the learned Judge when the explanation offered for her subsequent failure to contest the proceedings has been accepted.

12. At the same time, having regard to the fact that the decree was passed in respect of a money claim and that the respondent/plaintiff has the benefit of the security furnished in respect of the loan, coupled with the attachment already operating, the interests of the respondent/plaintiff stand substantially protected. It would, therefore, be appropriate to continue the attachment during the pendency of the suit, subject to the final adjudication therein.

13. For the foregoing reasons, this Court proceeds to pass the following:



CNR: KAHC010168192018

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WP No. 42921 of 2018
C/W CRP No. 557 of 2018

ORDER

- i. The writ petition is ***allowed***.
- ii. The condition imposed by the learned Judge requiring the petitioner/defendant to deposit 1/4th of the decretal amount of Rs.11,14,504/- is hereby modified.
- iii. The sum of Rs.1,50,000/- already deposited by the petitioner pursuant to the interim order of this Court shall be treated as sufficient compliance with the condition of deposit imposed while setting aside the *ex parte* decree and restoring the suit.
- iv. Consequently, the Civil Revision Petition filed by the respondent/plaintiff questioning the order dated 07.09.2018 passed in Misc.No.810/2014 is dismissed.
- v. The order of attachment operating in respect of the property shall continue to remain in force during the pendency of the suit and shall abide by the result of the suit.
- vi. The learned Judge shall proceed with the suit and make every endeavour to dispose of the same expeditiously, preferably within a period of eight months from the date of receipt of a copy of this order, subject to there being no impediment in law.



CNR: KAHC010168192018

NC: 2026:KHC:50919
WP No. 42921 of 2018
C/W CRP No. 557 of 2018

vii. It is made clear that the observations made herein are confined to consideration of the condition imposed while restoring the suit and shall not influence the learned Trial Court while adjudicating the suit on its merits.

viii. All contentions of the parties on merits are left open.

ix. The amount of Rs.1,50,000/- deposited by the petitioner shall abide by the final result of the suit.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE