



CNR: KAHC010349652021

NC: 2026:KHC:37865
W.P. No.17359/2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 22ND DAY OF JULY, 2026
BEFORE
THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL
WRIT PETITION NO.17359/2021 (GM-CPC)

BETWEEN:

SRI. B.L. KESHAVAMURTHY
AGED ABOUT 83 YEARS
S/O B.V. LAKSHMAIAH
RESIDING AT 201
GR PEARL APARTMENTS
CHUNCHAGATTA MAIN ROAD
JP NAGAR 7TH PHASE
BANGALORE-560078.

...PETITIONER

(BY SRI. PRATEEK RATH, ADV.,)

AND:

Digitally signed
by RUPA V
Location: HIGH
COURT OF
KARNATAKA

1. SRI. SYED BASHEER MALIK
S/O LATE ALHAJ S.A. MALIK
AGED ABOUT 72 YEARS
R/AT 7-O, SHANGNASCY ROAD
LANGFORD GARDEN
BENGALURU-560025.
2. SRI. RAJIV
MAJOR IN AGE
S/O LATE B.L. SRINIVASAMURTHY.
3. SRI. ANITHA KUMARI
D/O LATE B.L. SRINIVASAMURTHY
AGED ABOUT 57 YEARS.



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R2 TO R3 ARE R/ AT NO.713
10TH A MAIN, 4TH BLOCK
JAYANAGAR, BENGALURU-560027.

4. SMT. LALITHA
W/O B.L. KESHAVAMURTHY
AGED ABOUT 60 YEARS
RESIDING AT GR PEARL APT. 201
CHUNCHAGATTA MAIN ROAD
JP NAGR 7TH PHASE
BANGALORE-560062.
5. SRI. DHRUTHI .V
AGED ABOUT 47 YEARS
S/O B.L. VASUDEVAMURTHY
R/AT TAMPA, USA
PERMANENT ADDRESS
NO.19, NANJAPPA ROAD
SHANTINAGAR
BENGALURU 560027
REP. BY POWER OF ATTORNEY HOLDER
B.L.VASUDEVAMURTHY.
6. SRI. DAKSHA .V
S/O B.L. VASUDEVAMURTHY
AGED ABOUT 39 YEARS
RESIDING AT SOBHA DEWFLOWER
4TH CROSS, SARAKKI NAGAR
JP NAGAR 1ST PHASE
BENGALURU-560078.
7. M/S. NOOR AUTO GARAGE
NO.57, 6TH CROSS
SIDDAIAH ROAD
BENGALURU
PROP. LATE H. NAZEER AHMED.
8. SMT. HOORUNNISA
MAJOR
W/O LATE H. NAZEER AHMED.



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9. SRI. SADIQ
MAJOR
S/O LATE H. NAZEER AHMED.
 10. SMT. TABASSUM
MAJOR
D/O LATE H. NAZEER AHMED.
 11. SMT. TARANNUM
MAJOR
D/O LATE H. NAZEER AHMED.
 12. SRI. UMME SALMA
MAJOR
D/O LATE H. NAZEER AHMED.
 13. MISS. MUBASEERA SULTANA @ BABY
MAJOR
D/O LATE H. NAZEER AHMED.
- R8 TO R13 ARE RESIDING AT NO.1/27
1ST FLOOR, AYAPPA GARDEN, 1ST CROSS
BANNERGHATTA ROAD
MICO GATE, BENGALURU-560030.
14. SRI. NITIN P. KATARIA
S/O PRAKASH KUMAR KATARIA
AGED ABOUT 35 YEARS
R/AT NO.1/3, 4TH FLOOR
U.P.SHELTER, GOVINDAPPA STREET
1ST MAIN, SHESHADRIPURAM
BENGALURU - 560 020.

...RESPONDENTS

(BY SRI. H.R. ANANTHAKRISHNA MURTHY, ADV., FOR R1
V/O/DTD:04.10.2021, NOTICE TO R2 TO R14 STANDS
WAIVED)



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THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER DATED 9TH APRIL 2021 PASSED BY THE LEARNED XXXV ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH 36) IN O.S.NO.8701/2011 (I.E, ANNEXURE-A) ON I.A.NO.16 AS BEING VIOLATIVE OF ARTICLES 14 AND 21 OF THE CONSTITUTION OF INDIA & ETC.

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed seeking the following reliefs:

- "a). *Issue a writ of certiorari or any other writ or direction or order quashing the order dated 9 April 2021 passed by the learned XXXV Additional City Civil and Sessions Judge (CCH-36) in O.S.No.8701/2011 (i.e., Annexure-A) on IA No.16 as being violative of Articles 14 and 21 of the Constitution of India.*
- b). *Consequently allow I.A.No.16 filed by the petitioner under O 9 R 7 r/w S.151 of the CPC in OS 8701/2011 on the file of the XXXV Additional City Civil and Sessions Judge (CCH 36) by setting aside the order placing petitioner as being ex parte and*



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permit the petitioner to contest the case on merits”.

2. Heard Sri.Prateek Rath, learned counsel for the petitioner and Sri.H.R.Ananthakrishnamurthy, learned counsel for the respondent No.1.

3. The respondent No.1 filed a suit in O.S.No.8701/2011 seeking to set aside the judgment and decree passed in O.S.No.8326/2007 by the Additional City Civil Judge, Bengaluru, dated 03.08.2009 and for other reliefs. In the said suit, the petitioner herein was arrayed as a defendant No.3. The Trial Court placed the defendant No.3 *ex parte* on 09.10.2013. The said order was sought to be set aside in the application filed by the petitioner in I.A.No.16 under Order IX Rule 7 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'the CPC'). The Trial Court, under the impugned order rejected the application with cost of Rs.3,000/- by recording the reason that as per paragraph 3 of the affidavit supporting the application, the applicant had knowledge about the receipt



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of the summons. It is required to be noticed that the Trial Court, on 25.04.2013 observed that the suit summons issued to the defendant Nos.1, 2, 6, 7, 9 to 14 are duly served and that defendant Nos.3, 4, 5 and 8 have left the address. Order dated 02.07.2013 of the Trial Court indicates that the defendant Nos.1, 2, 6 and 7 were represented by a counsel, defendant Nos.9 to 14 were placed *ex parte* and it was observed that the summons issued through RPAD to the defendant Nos.3 to 5 and 8 returned as no such person in the address. The aforesaid two orders make it very clear that the petitioner who was the defendant No.3 in the suit was not residing in the address shown in the cause title of the plaint and the suit summons was not served.

4. Be that as it may, the plaintiff filed an application under Order V Rule 20(1)(a) of the CPC, seeking to serve the suit summons on the defendant Nos.3 to 5 and 8 by way of substituted service by publishing the



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summons in the English daily 'The Hindu' and the said application was considered by the Trial Court by recording the submission of the plaintiff that it is very difficult to serve the suit summons on the defendants in ordinary course and considering the same, the application was allowed and the plaintiff was permitted to serve the suit summons on the defendant Nos.3 to 5 and 8 by way of substituted service through paper publication as prayed in the application. The said order is dated 01.08.2013. It is required to be noticed that the Trial Court, on 09.10.2013 passed the following order:

"Defendant Nos.3 to 5 and 8 called out. No representations made out. Suit summons served by paper publication service held as proper and they are placed ex-parte. For hearing call on 07/11."

5. It is further required to be noticed that on 25.02.2019, the order sheet indicates that the defendant No.7 reports that the defendant No.5 has died on 15.11.2018. Interestingly, on 11.04.2019, the learned



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counsel for the plaintiff filed a memo stating that the defendant No.5 has died as a bachelor leaving behind his parents who are the defendant Nos.3 and 4. The said memo was accepted and the defendant Nos.3 and 4 were treated as legal representatives of the deceased defendant No.5. At this stage, it is required to be observed that the Trial Court has failed to take note of the fact that the defendant Nos.3 and 4 are the parents of the deceased defendant No.5 who were already placed *ex parte* by the Trial Court on 09.10.2013 and treating the defendant Nos.3 and 4 as the legal representatives of the deceased defendant No.5 is again without notice to the defendant Nos.3 and 4.

6. The defendant No.3, on noticing that he has placed *ex parte*, filed an application under Order IX Rule 7 read with Section 151 of the CPC, seeking to set aside the *ex parte* order and the Trial Court mechanically rejected the said application by observing that the defendant No.3



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has stated in paragraph 3 of the affidavit that on receipt of the summons of the Court, his family had moved out from the address. It is required to be noticed that though the said statement in the affidavit gives an impression that there was receipt of summons by the defendant No.3, however, the order sheet of the Trial Court clearly shows that the defendant Nos.3 and 4 have left the address shown in the cause title of the plaint long back and the summons was never served on them. It is also required to be noticed at this stage that the Trial Court, while allowing an application for substituted service of the defendant Nos.3 and 4, has not taken note of the earlier orders dated 25.04.2013 and 02.07.2013 wherein the order sheet clearly indicates that the aforesaid defendants i.e. defendant Nos.3 and 4 left the address and proceeded to allow the application. The Trial Court would not have entertained the application of the plaintiff seeking for substituted service unless the plaintiff makes an attempt to serve the summons to the correct address of the



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defendant No.3 and 4. Taking note of the orders passed by the Trial Court referred *supra*, I am of the considered view that the Trial Court has committed a grave error in placing the defendant No.3 *ex parte* and later holding that service of summons by substituted service without taking note of the earlier orders passed by the Trial Court, is erroneous and calls for interference. Hence, I proceed to pass the following:

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 09.04.2021 passed in O.S.No.8701/2011 by the XXXV Additional City Civil and Sessions Judge, Bengaluru, is set aside. Consequently, IA No. 16 filed by the defendant No.3 under Order IX Rule 7 read with Section 151 of the CPC, is allowed.
- (iii) The order placing the defendant No.3 *ex parte* is set aside.



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- (iv) The defendant No.3 is permitted to file written statement within a period of 4 weeks from the date of receipt of the copy of this order.
- (v) The Trial Court shall regulate the proceedings and proceed further.
- (vi) It is made clear that this Court has not expressed any opinion on the merits of the case.

Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE

RV
List No.: 1 Sl No.: 29