



CNR: KAHC010636642024

NC: 2026:KHC:47597
CRP No. 852 of 2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

CIVIL REVISION PETITION NO. 852 OF 2024 (RES)

BETWEEN:

ASADULLA
S/O. SHAIKH AHMED,
AGED ABOUT 53 YEARS,
R/O SANTHEPETE BADAWANE,
MASIDI ROAD, 2ND CROSS,
TUMKUR-572 137

...PETITIONER

(BY SRI. MALIPATIL P.S., ADVOCATE)

AND:

MOHAMMED MUNAFF
S/O. MOHAMMED PASHA,
AGED ABOUT 62 YEARS,
R/O JAYAPURA MAIN ROAD,
PH COLONY,
TUMKUR-570 008

...RESPONDENT

(BY SRI. G.S.VENKAT SUBBA RAO, ADVOCATE)

THIS CRP FILED UNDER SECTION 115 OF CPC, PRAYING TO SETTING ASIDE THE ORDER DATED 20.09.2024 PASSED IN MA NO.16/2021 ON THE FILE OF THE III ADDITIONAL DISTRICT JUDGE AND JMFC, TUMKUR AND ORDER DATED 16.04.2021 PASSED IN MISC.NO.4/2019 AND ALLOW MISC. NO.4/2019 AND SET ASIDE THE EX PARTE JUDGMENT AND DECREE DATED 04.08.2018 PASSED IN OS.NO.240/2016 ON



THE FILE OF SENIOR CIVIL JUDGE AND JMFC, TUMKUR DIRECTING THE SENIOR CIVIL JUDGE AND JMFC, TUMAKURU TO ALLOW THE PETITIONER TO FILE THE WRITTEN STATEMENT AND CONTEST THE SUIT AND TO PASS APPROPRIATE ORDERS AFTER GIVING SUFFICIENT OPPORTUNITY TO THE PETITIONER, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE SMT. JUSTICE LALITHA KANNEGANTI

ORAL ORDER

Aggrieved by the order dated 16.04.2021 passed in Misc.No.4/2019 by III-Additional Senior Civil Judge and JMFC, Tumakuru, the petitioner is before this Court.

2. The respondent therein has filed a suit for Specific Performance, i.e., O.S.No.240/2016. The petitioner was placed *ex parte*, and an *ex parte* judgment and decree were passed on 04.08.2018. Thereafter, execution was filed. It is the case of the petitioner that he came to know about the same on 01.02.2019 and filed the miscellaneous application on



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04.02.2019. It is the case of the petitioner that the notice was not served on him and that the endorsement states it was refused by him. He has never refused the suit summons. It is the case that the plaintiff, in collusion with the postal authorities, has placed such an endorsement. Hence, he sought to condone the delay in filing the same. That was dismissed by the order impugned, wherein the Court observed that the petitioner had not taken steps to examine the persons in the postal department and that a mere denial that the notices were not served on him was insufficient, and accordingly dismissed the miscellaneous application. Aggrieved thereby, the petitioner is before this court.

3. Learned counsel for the petitioner submits that he was unaware of the suit and that this came to his notice only in 2019, when he received notice in the execution petition. Unless and until the petitioner is given an opportunity to contest the matter, it would cause a lot of hardship to the petitioner. The Court below failed to consider these aspects and dismissed the application solely on the ground that the petitioner had not examined the postmaster regarding the service of notice.



4. Learned counsel appearing for the respondents submits that he paid Rs.15,00,000/- at the time of the agreement, and after the suit was decreed, the remaining amount was paid. It is submitted that the remaining amount was paid in the execution petition. It is submitted that from 2015 to 2026, and after the suit was decreed in 2018, the respondent/plaintiff has not been able to enjoy the fruits of the decree. It is submitted that this miscellaneous was filed in 2019, and thereafter, in 2024, the present petition was filed, and the petitioner is dragging on the proceedings without stating any valid reasons. Hence, there are no grounds to interfere with the well-considered order passed by the court below.

5. Having heard the learned counsel on either side, perused the material on record. An *ex parte* judgment and decree have been passed by the Court below. According to the petitioner, the notices were not served. He has never received the summons, nor has he refused it. The Court has considered the same and held that the petitioner has not examined anyone from the postal department. The miscellaneous was filed in



2019, and the present CRP is from 2024. The Decree Holder has not been able to enjoy the fruits of the decree right from 2019. The CRP has been pending before this Court for the last two years.

6. In these circumstances, and balancing the interests of both parties, this Court deems it appropriate to pass the following:

ORDER

- i. The order dated 16.04.2021, passed in Misc.No.4/2019 by the III-Additional Senior Civil Judge and JMFC, Tumakuru, is **set aside**. Consequently, the application is **allowed** on the condition that the petitioner shall pay Rs.1,00,000/- to the respondent.
- ii. Accordingly, the Civil Revision Petition is **allowed**.
- iii. The trial Court shall dispose of this matter within six months from the date of receipt of the copy of the order.
- iv. The trial court shall not grant unnecessary adjournments to the petitioner, and the



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petitioner shall cooperate with the trial. If the petitioner fails to cooperate, the court shall proceed with the matter.

- v. All pending I.As., in the petition shall stand closed.

SD/-
(LALITHA KANNEGANTI)
JUDGE

PKN
List No.: 1 SI No.: 58