

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.10 of 2011

ORDER:

Heard the learned counsel for the petitioner.

2. This Civil Revision Petition is filed challenging the order dt.20-12-2010 in O.S.No.34 of 2007 of the Junior Civil Judge, Kalyandurg.

3. The petitioner herein is the defendant in the above suit. The said suit was filed for recovery of money by the respondent against the petitioner. A *n ex parte* decree was passed in the suit on 25-04-2007.

4. On 24-01-2009 the petitioner filed I.A.No.214 of 2009 under Section 5 of the Limitation Act to condone delay of 610 days in filing application under Order 9 Rule 13 CPC and also another application under Order 9 Rule 9 CPC.

5. In the affidavit filed in support of this application, the petitioner stated that he did not receive any summons in the suit but he did receive summons in the E.P.No.20 of 2008 filed therein and he came to know about the *ex parte* decree.

6. Counter affidavit was filed by the respondent/plaintiff opposing the said application pointing out that the petitioner knew about the filing of the suit and

intentionally evaded the summons in the suit as well as in the execution petition for the previous two years. He also stated that the respondent had to take publication of summons in the suit before obtaining the decree against the petitioner. He contended that the application is filed only to harass the respondent and sought dismissal of it.

7. By docket order dt.20-12-2010, the Court below dismissed the said application. It observed that the returned suit summons in the suit shows that the Process Server of the Court went to the house of the petitioner on 23-03-2007 and enquired with the wife of the petitioner and came to know that the petitioner went to Belluguppa on his personal work and later he affixed the copy of the suit summons on the door of the house of the petitioner. It held that on 10-04-2007 the Court held that the service of the suit summons was sufficient and decreed the suit. It further observed that petitioner had not stated in his affidavit when he came to know about the proceedings in the suit since the date on which he received the summons in the E.P. was not mentioned by him.

8. Challenging the same, this Revision Petition is filed.

9. Although the learned counsel for the petitioner contended that the petitioner has not received summons in the suit and pleaded that he had no knowledge about the decree in the suit, the petitioner has

not placed any material before this Court to dispute the report of the Process Server that he went to the house of the petitioner on 23-03-2007 and enquired with the wife of the petitioner and also affixed the copy of the suit summons on the door of the house of the petitioner and informed the same to the Sarpanch of the village. The wife of the petitioner is not examined nor the Process Server was sought to be summoned to give evidence and cross examined on this aspect. The reasoning given by the Court below cannot be held to be wrong.

10. Therefore, there is no error of jurisdiction in the order passed by the Court below warranting interference by this Court under Section 115 CPC.

11. Accordingly this Revision Petition is dismissed. Interim Order granted earlier is vacated. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04-02-2016

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