IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF NOVEMBER, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO.5270 OF 2024 (GM-CPC)

BETWEEN:

1. SRI. HRUDAYARAJ
   AGED ABOUT 56 YEARS,
   S/O. LATE ANTHAPPA,

2. SMT. ELIZABETH
   W/O LATE MARIYAPPA,
   AGED ABOUT 66 YEARS,

3. SMT. ANTHONI MERI
   W/O LATE WILLIAMPETER,
   AGED ABOUT 48 YEARS,

   ALL ARE R/AT MARIYANNANAPALYA,
   DASARAHALLI DAKHALE,
   K.R.PURAM HOBLI,
   BANGALORE EAST TALUK.

...PETITIONERS

(BY SRI. NARENDRA BABU.H.L, ADVOCATE)

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AND:

1. SMT. DR.SHIRLEY JOCOB
   W/O DR. JOCOB CHERIAN,
   AGED ABOUT 54 YEARS,

2. DR. JOCOB CHERIAN
   S/O MR. M.I.CHERIAN,
   AGED ABOUT 56 YEARS,
   THE DEFENDANT NO.1 AND 2 ARE
   R/AT NO.D-37, ST.JOHNS MEDICAL

COLLEGE AND HOSPITAL,
STAFF QUARTERS, HOSUR ROAD,
BANGALORE - 560 034.

(DELETED AS PER COURT ORDER BY
VIRTUE OF SETTLEMENT)

3. R. SESHAGIRI
S/O R.RAMAIAH,
AGED ABOUT 30 YEARS,
R/AT NO.19, 4TH CROSS,
NEAR RATAN APARTMENTS,
MUTTHAPPA BLOCK,
GANGANAGARA EXTENSION,
BANGALORE - 560 032.

4. SRI. KONDAIAH
S/O LATE P.MALAKONDAIAH,
AGED ABOUT 47 YEARS,

5. SRI. P.M.MALAYADRI
S/O LATE P.MALAKONDAIAH,
AGED ABOUT 33 YEARS,

6. SRI. P.M.RAMA
S/O LATE P.MALAKONDAIAH,
AGED ABOUT 28 YEARS,

7. SRI. P.M.RAMESH
S/O LATE P.MALAKONDAIAH,
AGED ABOUT 24 YEARS,

RESPONDENTS NO.4 TO 7 ARE
R/AT NO.992, 13TH CROSS,
CHOLANAYAKANAHALLI,
SIDDESHWARA, R.T.NAGAR POST,
BANGALORE - 560 032,
AND ALSO AT NO.4, BALAJI LAYOUT,
1ST CROSS, NEAR CHOLANAGAR,
R.T.NAGAR POST, BANGALORE - 560 032.

8. MRS. AMMINI THOMAS
W/O MR.THOMAS JOHN,
AGED ABOUT 51 YEARS,
R/AT NO.1/1, 3RD CROSS,
BHUVANESHWARI NAGAR,
R.T.NAGARA POST,
BANGALORE - 560 032.

9. MR. ANTHONISWAMY
S/O AROGYAPPA,
AGED ABOUT 70 YEARS,
(SOUGHT FOR DELETION BY
VIRTUE OF SETTLEMENT)

10. SRI. KANIKYASWAMY
S/O LATE AROGYAPPA,
AGED ABOUT 56 YEARS,

DEFENDANTS NO.9 AND 10 ARE
R/AT NO.455/2, MARIYANNANAPALYA,
DASARAHALLI, H.A.FORM POST,
BANGALORE - 560 024.

11. SMT. SHANTHAKUMARI
D/O LATE MUNIMUDDAPPA,
AGED ABOUT 55 YEARS,

12. SRI. N.PRAVEEN
S/O. P.NAGARAJU,
AGED ABOUT 31 YEARS,

RESPONDENT NO.11 AND 12 ARE
RESIDING AT NO.1717/1,
MARIYANNANAPALYA, DASARAHALLI,
H.A.FORM POST, BANGALORE-560 024,
AND ALSO AT NO.98, S.B.M.COLONY,
ANANDA NAGAR, BANGALORE - 560 024.

13. HRUDAYARAJU @ S.I.REDDY
S/O BILLIMANE SANDHYAGAPPA,

AGED ABOUT 61 YEARS,
RESIDING AT NO.122,
SANTIGO VILLA,
MARIYANNANAPALYA,
DASARAHALLI, H.A.FORM POST,
BANGALORE - 560 024,
AND ALSO AT NO.719, 2C,
1ST BOCK, H.R.B.R. LAYOUT,
KALYANAGAR, BANGALORE - 560 043.

14. MELKIYAS SIMON.C
S/O LATE CHINNAPPA.C,
AGED ABOUT 42 YEARS,
R/AT MARIYANNANAPALYA,
DASARAHALLI, H.A.FORM POST,
BANGALORE - 560 024.

…RESPONDENTS

(BY SRI. K.S.CHANDRAHASA, ADVOCATE FOR R10;
SRI. P.UDAYASHANKAR RAI, ADVOCATE FOR R3 TO R7;
VIDE ORDER DATED 20.02.2024, NOTICE TO R1 TO R9 & R11 TO R14 ARE DISPENSED WITH)

THIS W.P. IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION IN THE NATURE OF CERTIAORARI, QUASHING THE IMPUGNED ORDER DATED 06.02.2024 (ANNEXURE-A) PASSED BY X ADDITIONAL CITY CIVIL JUDGE, BANGALORE (CCCH-26) (HEREINAFTER 'LEARNED TRIAL JUDGE') IN OS NO.7598 OF 2012 ON IA NO.IV FILED BY THE PETITIONER/PLAINTIFF UNDER SECTION 151 OF THE CODE OF CIVIL PROCEDURE, 1908 FOR RE-CALLING THE ORDER OF DISMISSAL OF THE SUIT FOR DEFAULT/NON-PROSECUTION DATED 20.09.2022; AND ETC

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

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. The present petition seeks to challenge an order dated 06.02.2024 passed by the X Additional City Civil Judge, Bangalore, on I.A.No. IV in O.S.No.7598/2012 (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, an application filed under Section 151 of the CPC for recalling of the order of dismissal of the suit for non-prosecution on 20.09.2022, was dismissed.

2. The learned trial Court has held that the remedy availed by the petitioners/plaintiffs is not an appropriate remedy, but the remedy as stipulated under Order IX Rules 8 and 9 of the CPC should have been taken. It was further stated that the remedy taken was belated as well.

3. Notice to respondent Nos.1 to 9 and 11 to 14 was dispensed with by this Court by its order dated 20.02.2024. However, counsel appears for respondent Nos.3 to 7 before this Court and submits that he has no objection if the prayers of the petition are allowed.

4. The matter is contested by the counsel for respondent No.10/defendant No.10 (the only contesting party before the Trial Court).

5. The facts are not in dispute. A suit for declaration and injunction being O.S.No.7598/2012, was filed by the petitioners/plaintiffs. The suit as stated above, was contested by the defendant No.10 alone. Pursuant to an amendment, the amended plaint was filed by the petitioners/plaintiffs on 24.02.2022. Thereafter, the matter proceeded for filing of additional written statement as well as for framing of additional issues. On 14.06.2022, additional issues were framed and the matter was listed for plaintiff's evidence. Thereafter, on three dates of hearing, i.e. on 04.07.2022 and 03.08.2022 and 25.08.2022, when the matter was listed for plaintiffs' evidence, the plaintiffs were not present, although their Advocate was present. On 25.08.2022, the Advocate for the plaintiffs had stated (which is recorded in the order sheet) that the plaintiff is unwell and a final opportunity was granted subject to

payment of costs of Rs.500/- for presenting plaintiffs' evidence. The case was adjourned to 20.09.2022 for evidence. However, on 20.09.2022, since the plaintiffs and their counsel were not present till 04:20 p.m., the suit was dismissed. The orders dated 24.2.2022, 04.07.2022, 03.08.2022, 25.08.2022 and 20.09.2022 reflecting this, are extracted below:

> ***24.02.2022:***
>
> *The Counsel for plaintiff files amended plaint.*
> *For additional WS by 14.03.2022."*
>
> ***04.07.2022:***
>
> *Plaintiff called out absent. Advocate prays time for evidence.*
> *Finally by 03.08.2022.*
>
> ***03.08.2022:***
>
> *Plaintiff called out absent, advocate prays time.*
> *Looking to long pendency of matter final chance is accorded.*
> *For plaintiff evidence by 25.8.2022.*
>
> ***25.08.2022:***
>
> *Plaintiff called out absent. Advocate prays time on the ground of ill-health of the plaintiff.*
> *Looking to the long pendency of matter, final chance is accorded on payment of cost of Rs.500/- which shall go to DLSA.*
>
> *For evidence by 20.09.2022.*

20.09.2022:

Plaintiffs and their counsels called out absent. No representation since 11.00 am till 4.20 pm.

It is revealed from the record that since long the plaintiffs have not turned up for leading evidence nor they have submitted the amended plaint despite availing sufficient opportunities. The plaintiffs appeared to be not interested in proceeding with the case. Hence, the suit of the plaintiff is hereby dismissed for default/non-prosecution.

For defendant evidence if any in view of the defence raised by D-10 in his WS.
By 19.10.2022."

6. The record thereafter shows that even after the suit was dismissed for default/non-prosecution, the matter was listed for the defendant's evidence. Several hearings were held for the purpose of the defendant's evidence between 19.10.2022 and 06.02.2024, the date the Impugned Order was passed. It is not disputed that there was no counter claim. Thus, after the suit was dismissed, it is not clear as to why the Trial Court was continuing the proceedings.

7. In addition, the Impugned Order reflects that the Trial Court has stated in the Impugned Order that the amended plaint was not filed. However, as can be seen from the order

dated 24.02.2022, the amended plaint was filed by the plaintiffs on that date. Concededly, since the amendment of the plaint was undertaken only on 24.02.2022 and thereafter Issues were framed and the case was fixed for evidence on 04.07.2022, it cannot be said that the plaintiffs were delaying the matter. The learned Trial Court has however held that the matter continued as the plaintiffs had entered into a compromise with some of the defendants. However, the orders reflect that there was no compromise till as late as 04.07.2023. This procedure of the Trial Court continuing the matter after the suit has been dismissed and there was no counter claim as well, cannot be understood. Given what is stated above, the Impugned Order cannot be sustained.

7. Accordingly, the petition is ***allowed.*** The Impugned Order is set-aside. The learned Trial Court shall examine the I.A.No. IV afresh and pass orders thereon, in accordance with law. It is clarified that this Court has not examined the

matter on merits. The rights and contentions of both the parties are left open. All pending applications stand closed.

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Location: HIGH COURT OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

KS
List No.: 1 Sl No.: 30