CNR: KAHC010202012024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF NOVEMBER, 2026

BEFORE

HON'BLE MS. JUSTICE TARA VITASTA GANJU

WRIT PETITION NO.10013 OF 2024 (GM-CPC)

BETWEEN:

BHEEMAPPA DEAD BY HIS LRS

1. SMT. GIRIYAMMA
   W/O LATE BHEEMAPPA,
   AGED ABOUT 76 YEARS,

2. SRI. NEELAKANTAPPA
   S/O LATE BHEEMAPPA,
   AGED ABOUT 57 YEARS,

3. SMT. LAKAMMA
   D/O LATE BHEEMAPPA,
   W/O HANUMANTHAPPA
   AGED ABOUT 54 YEARS

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SUMASTHY KANNAN
Location: HIGH
COURT OF
KARNATAKA

4. SRI. KUBERAPPA
   S/O LATE BHEEMAPPA,
   AGED ABOUT 51 YEARS,

5. SMT. CHANDRAKALA
   D/O LATE BHEEMAPPA,
   W/O BOGESH
   AGED ABOUT 49 YEARS,

6. SRI. KALLESHAPPA
   S/O LATE BHEEMAPPA,
   AGED ABOUT 46 YEARS

ALL ARE AGRICULTURISTS AND
RESIDENTS OF KALGERE VILLAGE,
BHARAMASAGARA HOBLI,
CHITRADURGA TALUK AND
DISTRICT – 577 519.

…PETITIONERS

(BY SRI. GOPALAKRISHNAMURTHY C, ADVOCATE)

AND:

SRI. HANUMANTHAPPA
S/O SIDDAPPA,
AGED ABOUT 78 YEARS,
AGRICULTURIST,
R/O KALGERE VILLAGE,
BHARAMASAGARA HOBLI,
CHITRADURGA TALUK AND
DISTRICT – 577 519.

…RESPONDENT

(BY SRI. JAGAN MOHAN M T, ADVOCATE)

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASHING THE ORDER PASSED IN R.A NO.24/2023, IA NO.1/2023 UNDER SECTION 5 OF THE LIMITATION ACT, 1963 DATED 20-02-2024 PENDING ON THE FILE OF I ADDL. SENIOR CIVIL JUDGE AND JMFC, CHITRADURGA AS PER ANNEXURE-A CONSEQUENTLY REJECT THE IA NO.1 FILED UNDER SECTION 5 OF THE LIMITATION ACT ALONG WITH AFFIDAVIT DATED 07.06.2023 PENDING ON THE FILE OF PRINCIPAL SENIOR CIVIL JUDGE AT CHITRADURGA IN RA NO.24/2023 AS PER ANNEXURE-B; AND ETC

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

CORAM: HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORAL ORDER

1. On the last date of hearing, the following order was passed:

> *"1. The present petition seeks to challenge an order dated 20.02.2024 passed by the I Addl. Senior Civil Judge & JMFC, Chitradurga in R.A.No.24/2023 (hereinafter referred to as the 'Impugned Order'). By the Impugned Order, an application filed by the respondent herein under Section 5 of the Limitation Act, 1963 (hereinafter referred to as the 'Limitation Act') filed in a Regular Appeal was allowed and the delay was condoned by the Appellate Court.*
>
> *2. The learned counsel for the petitioners submits that the suit in O.S.No.439/2013 was decreed on 15.02.2017 and thereafter after a lapse of 2217 days, an appeal was filed with an application under Section 5 of the Limitation Act. He further submits that the grounds of challenge in the application under Section 5 of the Limitation Act, were not sufficient to allow such an application. In addition, it is contended that pursuant to the Execution proceedings being filed by the petitioners/decree-holders, the respondent/Judgment Debtor, appeared on 24.08.2020 and contested the execution proceedings, in spite of which, he did not deem it appropriate to file an appeal. The learned counsel seeks to rely upon the order-sheet before the Executing Court which he is placing on record along with a memo. Thus, it is contended by the learned counsel for the petitioners/decree holders that no sufficient cause was shown by the respondent/Judgment Debtor despite which*

the learned Trial Court allowed the application under Section 5 of the Limitation Act.

3. Learned counsel for the respondent/Judgment Debtor on the other hand submits that the respondent was not aware of the legal proceedings. He further submits that however, he does not dispute the fact that he appeared in the execution proceedings which were pending from the year 2020. Lastly, it is contended by the learned counsel for the respondent that the petition is not maintainable in view of the provision of Section 115 of the CPC since in the event the Court deems it apposite to allow the petition, the appeal itself will get dismissed. So, a revision petition ought to have been filed.

4. The objection on maintainability has been raised by the learned counsel for the respondent/Judgment Debtor after the entire arguments have been concluded.

5. Learned counsel for the petitioners/Decree Holders requests for some time to take instructions on this aspect.

6. This Court is of a prima facie view, that the grounds set out in the application under Section 5 of the Limitation Act were not sufficient cause for condoning the delay."

2. The learned counsel for the petitioners/Decree Holders has returned with instructions. Relying on a judgment of a Co-ordinate Bench of this Court in the case of ***Ujwal A. Gowda Vs. The State of Karnataka & Others[1],*** he submits that since the Court has already given a *prima facie* view that the grounds were not

[1] NC: 2026: KHC: 4056

sufficient cause, this petition may be disposed of remanding the matter to the Trial Court and granting an opportunity to the respondent/Judgment Debtor to file a better affidavit in the matter. Learned counsel for the petitioner submits that it would be in the interest of expediency that he is making this submission.

3. Learned counsel for the respondent/Judgment Debtor submits that he would have no objection to this suggestions.

4. In view of the consensus arrived at between the parties, granting the respondent/Judgment Debtor one opportunity to file a better/additional affidavit in support of I.A. filed seeking condonation of delay, the Impugned Order is set side and the matter is remanded to the First Appellate Court for re-consideration of the application, *albeit* in accordance with law.

5. The petition is ***disposed*** of. All pending applications stand closed.

Digitally signed by
TARA VITASTA GANJU
Location: HIGH COURT
OF KARNATAKA

(TARA VITASTA GANJU)
JUDGE

KS
List No.: 1 Sl No.: 29