HC-KAR

NC: 2026:KHC:65166
WP No. 34379 of 2026

CNR: KAHC010745102026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE K. V. ARAVIND

WRIT PETITION NO. 34379 OF 2026 (GM-CPC)

BETWEEN:

1. SRI. GANGARAJU
   SINCE DEAD BY HIS LEGAL HEIRS
   SMT. KANTHAMMA
   W/O LATE GANGARAJU
   AGED ABOUT 48 YEARS,

2. SRI. RAJU
   S/O LATE GANGARAJU,
   AGED ABOUT 29 YEARS,

3. SRI. UDAYA
   S/O LATE GANGARAJU
   AGED ABOUT 27 YEARS,

   ALLL ARE RESIDING AT
   HONNAGANAHATTI VILLAGE
   HALACHAGUPPE ROAD,
   TAVEREKERE HOBLI,
   BENGALURU SOUTH TALUK.
   PINCODE-562130

...PETITIONERS

(BY SRI A. G. NAGARAJA, ADVOCATE)

Digitally signed by VIJAYA P
Location: High Court of Karnataka

AND:

1. SRI. D.C PUTTAIAH
   S/O CHINNAPPA ,
   AGED ABOUT 68 YEARS,

RESIDING AT
DIBBUR VILLAGE,
HESARAGHATA HOBLI,
BENGALURU DISTRICT.
PINCODE-560088

…RESPONDENT

THIS WP IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH/SET-ASIDE THE IMPUGNED ORDERS DATED 28.09.26 PASSED IN MA NO.52/2022 BY THE HON'BLE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT AT BENGALURU PRODUCED AT ANNEXURE A AND DISMISS THE APPEAL FILED BY THE RESPONDENT WITH EXEMPLARY COST IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: HON'BLE MR. JUSTICE K. V. ARAVIND

ORAL ORDER

The present petition calls in question the order dated 28.09.2026 passed in M.A. No. 52/2022.

2. Learned counsel appearing for the petitioners submits that the suit was instituted against the defendant seeking a decree of specific performance of the agreement of sale dated 09.01.1998. It is submitted that, on several occasions, the suit summons and notices sent through RPAD remained unserved, as the defendant had avoided service. Thereafter, an

application was filed under Order V Rule 20 of the Code of Civil Procedure, pursuant to which the Trial Court ordered service of notice by way of affixture and held such service to be sufficient. Consequently, the defendant was placed ex parte and the Judgment and Decree dated 01.12.2002 came to be passed.

2.1 It is further submitted that the application filed by the defendant seeking to set aside the ex parte Judgment and Decree came to be rejected by the Trial Court, against which an appeal was preferred. In the impugned appeal, it is contended that the Appellate Court, without duly appreciating the evidence on record bearing on the sufficiency of service by way of affixture and the rejection of the application seeking to set aside the ex parte Judgment and Decree, proceeded to pass the impugned order. It is therefore contended that the impugned order cannot be sustained in law.

3. Considered the submissions made by learned counsel for the petitioners and perused the material on record.

4. The suit is one for specific performance of the agreement dated 09.01.1998. The proceedings remained at the stage of

service of summons on the defendant. On several occasions, when suit summons were issued, the petitioner took steps only for service of summons and did not take steps for issuance of notice through RPAD. This position continued until 18.01.2003. Thereafter, the plaintiff filed an application under Order V Rule 20 of the Code of Civil Procedure, seeking substituted service by way of affixture. By order dated 18.01.2003, the Trial Court allowed the application, observing that grounds for avoidance of service had been made out. It is contended that the defendant had knowledge of the institution of the suit for specific performance.

5. It is relevant to notice that, from the date of institution of the suit until 18.01.2003, neither the suit summons nor the notice through RPAD was served on the defendant. There is no reference to the issuance or return of the RPAD notice. The only material available is the endorsement made by the process server on more than two occasions, recording that no one was available in the house for service of summons and that no member of the public cooperated in the preparation of the mahazar.

6. It is to be noted that an application under Order V Rule 20 of the Code of Civil Procedure can be entertained only when the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service of summons or that, for any other reason, summons cannot be served in the ordinary manner. Though service of summons by way of affixture is permissible, the order dated 18.01.2003 does not record any satisfaction or assign reasons to indicate that the defendant was deliberately avoiding service of summons. Further, there is no reference to the issuance of notice through RPAD. The endorsements made by the process server, in the absence of any corroborative material, remain unsubstantiated and cannot, by themselves, be relied upon to deny the defendant an opportunity to contest the proceedings.

7. The Appellate Court, in the impugned order, having noticed the non-compliance with the procedural requirements, allowed the application and set aside the ex parte judgment and decree, thereby restoring the proceedings for adjudication on merits.

8. Having perused the pleadings, the reasons assigned in the impugned order and the documents available on record, this Court is of the view that the Appellate Court has arrived at its conclusion on the basis of the material available on record.

9. In the absence of any demonstrable ground warranting interference with the impugned order, this writ petition fails and is accordingly ***dismissed***.

10. Having regard to the fact that the suit for specific performance has been pending since 2002 and that the ex parte judgment and decree have now been set aside and the suit restored to its original file, the Trial Court is directed to expedite the proceedings and dispose of the suit within an outer limit of nine months from today.

Sd/-
(K. V. ARAVIND)
JUDGE

DDU
List No.: 2 Sl No.: 12