

IN THE COURT OF SENIOR CIVIL JUDGE, BAILHONGAL
AT: BAILHONGAL.

Present: Smt.Shrikaveri.B.Kalmath,
B.Com.LL.B (Spl),
Senior Civil Judge, Bailhongal.

Misc. No.1/2018

Dated: 29th September, 2018

1. Appasaheb Guruputrayya Hiremath,
Age: 50 years, Occ: Agriculture,
R/o: Kuragund, Tq: Bailhongal.
...Petitioners.
(By Shri. U.C. Hiremath, Advocate)

V/s

1. The S.L.A.O.,
M.P. 3, Dharwad,
Now at Bagalkot, Tq:/Dist: Bagalkot.
2. The Executive Engineer,
MLBC, Divn. No. 2, KNN Ltyd.,
Naviluteerth, Tq: Soundatti,
Dist: Belagavi.

(Respondent No.1 Asst. Government Pleader)
(Respondents No.2 Shri.M.I. Potdar, Advocate)
...Respondents.

ORDER

This petition is filed U/or. 9 Rule 9 of CPC for
restoration of LAC No.55/2014.

2. The brief contents of the petition are as under:

It is pleaded that, petitioner has instituted LAC No.55/2014 for enhanced compensation for his acquired land. The respondents contested the petition by filing objections. In the said petition he was due diligent in prosecuting the case. However, when the case is posted for evidence on 10/11/2017, he and his counsel remained absent before the court. On that day he was attended the marriage of his nearest relatives and his counsel also attended the said marriage for that reason he and his counsel remained absent before the court on 10/11/2017. Though his counsel requested his colleague advocates to seek adjournment but due to rush of work colleague advocate did not represent the matter before the court. Considering their absence it was dismissed on 10/11/2017. Further it is pleaded that, there is no negligence on the part of himself and his counsel. There is no deliberate or willful intention. For sufficient cause only he and his counsel remained absent before the court. In spite of due diligence the matter was dismissed. If dismissal order was not set aside and it was not restored on its original file, he will be put to injustice and prays to allow the petition.

3. After registering the petition in pursuance of notice respondents No.1 and 2 appeared through AGP and MIP advocate respectively. Both have filed objections.

4. The brief contents of objections of respondent No.1 are as under;-

It is pleaded that, there was LAC case pending before this court and it was dismissed for default. He denied that, petitioner has not engaged any advocate in the said Lac case and he was not aware of the date of proceedings as there is an advocate representing the claimant, question of issuing notice to the claimant could not arise. So the claimant can not say that, he had no knowledge of dismissal of the case on particular date. The reasons given by the claimant for condonation of delay for filing the petition can not be accepted as grounds stated for condonation in the affidavit and petition are not having any basic proof. The conduct of the petitioner clearly indicates that, he is very well satisfied with the award of the opponent. But it is apparent that, some other people other than the petitioner are interested in getting enhanced compensation in this matter. As the award by the opponent is sufficient and proper which has been

made clear by the conduct of the claimant, there is no hardship or loss to the claimant. On the other hand, if petition is allowed exchequer of the government which belongs to the tax payer and people will be burdened and prays to dismiss the petition.

5. The brief contents of objections of respondent No.2 are as under;-

He pleaded that, petition is false, frivolous and baseless. He admits that LAC No.55/14 of petitioner was dismissed for non prosecution. Further he denied that, on 10/11/2017 the petitioner and his counsel remained absent since they attended the marriage of their nearest relative. Further he pleaded that, petition is not maintainable under any law and procedure since Hon'ble court not only dismissed the petition but also confirmed the award of the SLAO. So Order 9 Rule 9 of CPC is not applicable to the case in hand. Further he pleaded that, petition is time bared. On that count itself it should be dismissed. Further he pleaded that, LAC No.55/14 registered on 19/9/2014. For more than 3 years case is posted for evidence. The order sheet reveals that, petitioner has not made any effort to lead

evidence and proceed with the case. The very conduct of the petitioner indicates that, he is very well satisfied with the award of the respondent No.1. Under such circumstances, if petition is dismissed no loss or hardship would be caused to the claimant. On the other hand, if petition is allowed it is exchequer to the Government and prays to dismiss the petition.

6. In order to prove his case, petitioner examined himself as Pw-1 and also Ex.P.1 and 2 documents and closed his side. Whereas, none of the respondents led any evidence.

7. Heard the arguments and perused the materials before the court. During the course of argument counsel for the petitioner relied the judgment reported in ICC (Kar) (DB) 2008(2) Page No.536 and AIR 2002(SC) Page 726.

8. To decide the petition, the points that would arise for my consideration are as under:

- i). Whether the petitioner proves that, for sufficient cause only he remained absent before the court on 10/11/2017 in LAC No.55/2014?
- ii). What order?

9. My answers to the above points are as under:

Point No.1 : In the Affirmative,

Point No.2: As per final order, for the following:

REASONS

10. **Point No.1 and 2:-** It is an admitted fact that, petitioner is the claimant in LAC No.55/2014 which was dismissed on 10/11/2017 for non-prosecution. The main grounds urged by the petitioner in the petition that, on that day he was attended the marriage of his nearest relative. Hence, he could not appeared before the court and his counsel also attended the said marriage so his counsel also remained absent before the court. Though his counsel requested his colleague advocates to represent the case but due to rush of work he failed to represent the case. Considering their absence this court dismissed the petition. Accordingly, petitioner substantiated the above said fact on oath in his chief-examination affidavit. Further, to corroborate the same he got marked wedding card at Ex.P.2. The said wedding card reveals the fact that, marriage of one Sandeep and Tejasvini was fixed on 10/11/2017. It is the say of the petitioner that, he was attended the marriage of

his nearest relative. The said fact is not at all denied by the respondents. Though learned counsels for respondents cross-examined the Pw-1 in length but to disbelieve the say of petitioner they have not elicited any facts from the mouth of Pw-1. Further, cross-examination of Pw-1 corroborate the case of the petitioner that on that day he and his counsel attended the said marriage. So, the grounds urged by the petitioner can be accepted that, for sufficient cause only he and his counsel remained absent before the court when LAC No.55/2014 called out on 10/11/2017.

11. The counsel for the respondent No.2 has taken specific defence that, on 10/11/2017 this court not only dismissed LAC No.55/2014 for non-prosecution but also confirmed the order of SLAO. Under such circumstances, Or. 9 rule 9 of CPC not applicable to the case in hand and prays to dismiss the petition. It is true, order sheet which is marked at Ex.P.1 go to show that, this court while dismissing LAC No.55/2014 for non prosecution, confirmed the award of the SLAO. But, the learned counsel for the petitioner relied the judgments reported in 2008(1) KLJ 206 and AIR 2002 S.C. 726 and submits that, even if claimant not

appeared before the court to lead evidence court has to dispose off the matter on merits. I have thoroughly gone through the said judgments wherein it is held that, “*non participation of any party would not confer the jurisdiction on the civil court to dismiss the reference for default. Court to investigate on the claims made by the claimant. Even, if the claimant does not co-operate with the court, the court has to look into the materials and pass an award on merits*”. The principles laid down in the above said judgment aptly applicable to the case in hand.

12. When the petitioner convince the court that for sufficient cause only he and his counsel remained absent on 10/11/2017 and in view of principle laid down in the above said judgment, I am of the opinion that, it is just and necessary to set aside the dismissal order as prayed in the petition. Accordingly, I answer point No.1 in the Affirmative and proceed to pass the following;-

ORDER

The petition filed U/o. 9 Rule 9 of CPC is hereby allowed and set aside the dismissal order passed in LAC No.55/2014 dated 10/11/2017.

Further office to restore the LAC
No.55/14 on its original file on 3/11/2018.

Further parties are directed to appear in
LAC No.55/14 on 3/11/2018 without
waiting for notice from the court.

(Dictated to the Stenographer, transcribed and computerized by her, corrected by me and then pronounced in the open court, today 29th day of September, 2018).

sd/-
(Smt.Shrikaveri.B. Kalmath)
Senior Civil Judge, Bailhongal.

Annexure

Witnesses examined for the petitioners.

PW-1: Appasaheb Guruputrayya Hiremath.

Documents marked for the petitioner:

Ex.P.1. C.C. of order sheet of LAC.

Ex.P.2 Wedding card.

Witnesses examined and documents marked for the Respondents.

NIL

sd/-
(Smt.Shrikaveri.B. Kalmath)
Senior Civil Judge, Bailhongal.