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IN THE COURT OF THE PRIL. CIVIL JUDGE & J.M.F.C.,
BAGALKOT AT: BAGALKOT.

Present : Sri.PADMAKAR VANAKUDRE,
B.A., LL.B.,
Pril. Civil Judge & J.M.F.C., Bagalkot.

CIVIL MISC.NO.1/2018

Dated this 27th day of April 2019

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BETWEEN :

1. Smt.Indrawwa W/o. Janappa Jalendra,
Age: 35 Years, Occ : House hold work.
2. Kumari.Sakkubai D/o. Janappa Jalendra
Age: 18 Years, Occ: House hold work
Both R/o. Neeralkeri Tq & Dist: Bagalkot.
.... Petitioners.

(By Sri.S.B.Goudar, Advocate)

AND:

1. Ramappa S/o Hanamappa Jalendra,
Age: 68 Occ: Agriculture,
R/o. Muchakhandi Tq: & Dist: Bagalkot.
2. Smt.Bhagavva W/o. Ramappa Jalendra
Age: 65 Years, Occ: House hold work,
R/o. Uchakhandi Tq: & Dist: Bagalkot.
3. Hanamappa S/o. Ramappa Jalendra
Age: 45 Yars, Occ: Agriculture,
4. Rangappa S/o. Ramappa Jalendra,
Age: 43 years, Occ: Agriculture,
R/o. Neeralkeri Tq: & Dist: Bagalkot.
5. Smt.Muttavva W/o. Timmanna Hulageri,
Age: 36 Years, Occ: House hold work.
R/o. Sokaadagi Tq: & Dist: Bagalkot.
6. Smt.Kalavva W/o. Laxmappa Hulageri,
Age:34 Years, Occ: House hold work,
R/o. Neeralkeri Tq: & Dist: Bagalkot.
..... Respondents.

(Absent, placed exparte)

:ORDER:

The petitioners have filed this petition under order IX Rule-9 of C P C praying to set aside the order dated 21-10-2017 and to restore the suit in O.S.No.274/2015 to original file.

2. Learned counsel has also filed an application under section 5 of Limitation Act praying to condone the delay of 68 days caused in filing the application.

3. It is stated that the plaintiffs have instituted a suit in O S No.274/2015 for the relief of partition of 1/7th share against the respondents/defendants. The suit was on 21-07-2010 for taking steps. The plaintiff was out of village for his livelihood and the suit was dismissed for non prosecution. The absence of plaintiff was neither intentional nor deliberate. If the application is allowed no loss will be caused to the defendants on the other hand the plaintiff will be put to irreparable loss. The delay caused in filing the petition is neither intentional nor deliberate. Hence prayed to allow the application.

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4. Despite service of notice, the respondents No.1 to 6 have remained absent. Hence, respondents No. 1 to 6 placed ex-parte.

5. In order to prove the case, the petitioner No.1 examined herself as PW-1 and got marked one document at ExP-1.

6. I have heard the arguments and perused the materials placed on record.

7. The following points would arise for consideration;

1) Whether the petitioners have made out grounds to allow the petition?

2) What order?

8. My answer to the above points is as under;

Point No.1 : In the affirmative.

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

REASONS

9. **Point No.1:-** The suit filed by the petitioners/plaintiffs in O.S.No.274/2015 has been

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dismissed for non-prosecution on 21-10-2017. The petitioners have pleaded and deposed that, they are coolie and on the date of hearing they were out of village for their livelihood. Hence, they remained absent and the suit was dismissed. PW-1 has deposed that, the absence was neither intentional nor deliberate.

10. A perusal of material on record shows that, the suit was dismissed on 21-10-2017 and the petition is filed on 07-02-2018. There is a delay of 68 days in filing the application. It is argued that, the petitioner came to know about the dismissal of the suit when they returned to their village hence the delay is caused. The petitioners have made out sufficient cause for their non-appearance on the date of hearing of the suit. The delay caused in filing the present petition may be condoned by imposing costs on the petitioners. Hence, in the interest of justice, the petition deserves to be allowed. Accordingly, I proceed to answer the point under consideration in the affirmative.

11. **POINT No.2:-** In view of foregoing reasons, I proceed to pass the following.....

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ORDER

The petition is allowed.

The order of dismissed dated 20-10-2017 is set aside and the suit in O.S.No.274/2015 is restored to file on cost of Rs.3000/-

(Dictated to the Stenographer directly on the Lap-Top computer, script revised, corrected, signed by me and then pronounced in Open Court on this 27th day of April 2019)

Padmakar Vanakudre
27/4/19

(PADMAKAR.VANAKUDRE)
Pril. Civil Judge & JMFC., Bagalkot