

**IN THE COURT OF THE PRL. CIVIL JUDGE & JMFC.
AT KUNIGAL.**

**PRESENT: Sri. J. Krishna, B.A.,LL.B.,
 Prl. Civil Judge & JMFC.,
 Kunigal.**

Dated this the 13th day of January -2020.

Civil.Misc. NO.01/2018

PETITIONERS:-

1. Shankaraiah
S/o late Mayanna @ Puttaiah,
Aged about 55 years,
2. Puttalakshamma
W/o Shankaraiah,
Aged about 45 years,
3. Bhagyamma W/o Devaraja,
D/o Shakraiah,
Aged about 26 years,
R/o Puttanapalya village,
Amruthur hobli, Kunigal taluk.
4. Preethi W/o Javaregowda,
D/o Shankaraiah,
Aged about 24 years,
R/o Hosur village,
Kasaba hobli, Kunigal taluk.
5. Prema W/o Anil,
D/o Shankaraiah,
Aged about 22 years,
R/o Kichavadi village,
Huliyurduga hobli, Kunigal taluk.
6. Jagadeesha S/o Shankaraiah,
Aged about 20 years,
Petitioner Nos.1, 2 and 6 are
R/o Lakshmipura village,
Huliyurdurga hobli, Kunigal taluk.

(Represented by Pleader Sri. C.S. Chandrashekar)

V/s.

RESPONDANT:-

1. Nanjegowda @ Appaji
S/o late Mayanna @ Puttaiah,
Aged about 51 years,
Residing at Lakshmipura village,
Huliyurdurga hobli,
Kunigal Taluk.

(Represented by Pleader Sri K.G. Chandranna)

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ORDERS:-

The petitioners have filed the petition U/O 9 rule 13 of CPC to set aside the ex-parte judgment and decree passed in O.S.223/2016 dated 24/04/2017 on the file of Prl. Civil Judge and JMFC., Kunigal. Along with the petition the petitioners have filed application U/sec. 5 of Limitation Act, pray to condone the delay if any.

2.The petitioners in the petition it is submitted respondent is non other than own brother of petitioner No.1. The respondent has filed O.S. No. 223/16 before this court against the petitioners for Specific Performance of contract. The petitioner No.3 to 5 are residing in their respective matrimonial home not in the address mentioned in the cause title of O.S. No.223/2016. On perusal of order sheet of O.S. No.223/16 it is come to know that summons issued by RPAD duly served on petitioners accordingly they placed ex-parte. In fact no summons has been served on petitioner No.3 to

5. The petitioner No.1 on receipt of summons approached the respondent and enquired about the summons with respondent. In reply the respondent stated it is a formal notice to cancel the agreement and for repayment of money. When the petitioners pay the amount, the agreement will be cancelled no need to worry about summons. Therefore the petitioner No.1 kept quite. Later he received notice in execution No. 26/17 then he realized respondent has given false assurance and obtained ex-parte decree behind back of petitioners. Hence the petition. In support of the application U/Sec. 5 of Limitation Act, the petitioner No.1 filed affidavit, wherein he reiterated the above said facts.

3. The respondent appeared, filed objections. Denied all the averments of petition, except the relationship that respondent is own brother of petitioner No.1. It is specifically submitted that the petition is not maintainable either in law or on facts. The decree passed on 24-04-17 the petition filed on 01-01-18 after laps of 7 months. For the delay no reasonable explanation is offered or sufficient cause is shown. Hence prays to reject the petition.

4. The petitioners to prove their petition averments examined the petitioner No.1 as Pw.1. He filed affidavit in lieu of examination in chief, he has produced 4 documents as Ex.P.1 to 4 close the side. The respondent not adduced any evidence.

5. Heard the advocate for petitioners and respondent. On perusal of records, on perusal of records and upon hearing of advocates the court has framed following points for consideration:-

POINTS:-

1. Whether petitioners have made out sufficient reasons to allow the petition?
2. What order?

MY FINDINGS:-

Point NO.1:- In the Affirmative

Point NO.2 :- As per final order
for the following:-

REASONS:-

6. **Point NO.1:-** The petitioners to prove their petition averments examined the petitioner No.1 as Pw.1 he filed affidavit in lieu of examination in chief, wherein he reiterated the contents of the petition. He has produced 4 documents as Ex.P.1 to 4. Ex.P.1 is certified copy of the judgment of O.S. No. 223/16 discloses suit decreed ex-parte on 24-04-17. The petitioners have applied for copy of 24-10-17 and obtained on 02-11-17. Exs.P.3 and 4 are certified copies of the ordersheet and plaint in O.S. No.223/16 discloses that respondent had filed the suit for Specific Performance against the petitioner and in the cause title it is shown petitioner No.1 to 6 are

residing at Lakshmipura, Huliurdurga hobli, Kunigal Taluk. The ordersheet discloses the summons issued by RPAD duly served on petitioner No.1, 2 and 6 on behalf of respondent No.3 to 5 the respondent No.1 received summons they remained absent. Accordingly they placed ex-parte. On perusal of Ex.P.1 to 4, it is clear that suit decreed in ex-parte and petitioner obtained the copy of the judgment on 02-11-17 and the petition filed on 01-01-18.

7. It is specific case of the petitioners that petitioner No.3 to 5 are married and residing in their respective matrimonial home. In the petition they shown their address to Puttanapalya village, Hosur village and Kichavadi village respectively. This fact is not disputed by the respondent in the objections or in the cross examination of Pw.1. Therefore it is clear that the respondent has given wrong address in respect of petitioner No.3 to 5 in the O.S. No.223/16. Therefore it is not sufficient service against defendant No. 3 to 5. The petitioners specifically pleaded that petitioner No.1 on receipt of summons approached the respondent, who is the brother of petitioner No.1 inturn respondent given false assurance that the notice is given for demand of payment and to cancel the agreement. Therefore the petitioners have kept quite. This fact also not disputed by the respondent by cross examine the Pw.1. Therefore considering the relationship between the petitioner and respondent No.1, averments of petitioner cannot be doubted. Therefore the reason mentioned by

the petitioner in the affidavit is reasonable one from being absent before the court on receipt of summons in O.S. No.223/16

8. As stated supra the petitioners have made out sufficient reasons that they were prevented by sufficient cause from appearing before the court and on petitioner No.3 to 5 summons was not duly served. Therefore they are entitled to get allow the petition and setting aside the ex-parte decree. But the another question before the court, whether the petition is in time or in sufficient cause is shown by the petitioners to condone the delay.

9. As stated supra decree passed on 24-04-17 the petition is filed on 01-01-18 that is after laps of 7 months. The petitioners submit they came to know about the decree only on receipt of notice in execution petition 26/17 but the date on which they received notice in the execution petition is not mentioned. The certified copy of the judgment discloses the petitioners have applied for copy of judgment on 24-10-17 and obtained on 02-11-17 and the petition the petition is filed on 01-01-18. Considering the said dates the petition is not in time. However considering the background of the case, I find it is just and necessary to condone the delay to ensure the justice. Accordingly **I answer point No.1 in the Affirmative.**

10. **Point NO.2:-** for the reason stated above I proceed to pass following:-

ORDER:-

The petition filed by the petitioners Under order 9 rule 13 of CPC is hereby allowed on cost of Rs.3,000/-.

The Ex-parte judgment passed in O.S. No.223/16 dated 24-04-17 is hereby set aside.

Office is directed to restore the O.S. No.223/16 in its original number and parties are directed to appear before the court on 17-02-2020.

(Dictated to stenographer, transcribed and computerized print out taken by her, corrected by me and then pronounced in the open court on this 13th day of January 2020)

**(Sri J.Krishna)
Prl.Civil Judge & MFC.,
Kunigal.**

(Sri J.Krishna)
Prl.Civil Judge & MFC.,
Kunigal.

(Order pronounced in open court vide separate)

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