IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF JANUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE R.NATARAJ

WRIT PETITION NO.203757 OF 2024 (GM-CPC)

BETWEEN:

BASAPPA
S/O CHANDRAPPA MASARAKALL,
AGE: 48 YEARS, OCC: TEACHER,
R/O INFRONT OF KEB, TALIKOTI,
TQ. MUDDEBIHAL.

...PETITIONER

(BY SMT. HEMA L. KULAKARNI, ADVOCATE)

AND:

1. SHARANAGOUDA
S/O BASANAGOUDA PATIL,
AGE: 43 YEARS, OCC: CHARTED ACCOUNTANT,
R/O SHOP NO.238, 239, FIRST FLOOR,
SANGANABASAVA COMPLEX,
BLDE HOSPITAL ROAD, VIJAYPURA,
TQ. AND DIST. VIJAYPURA-586101.

2. BHIMANNA
S/O SANGAPPA INGALESHWAR,
AGE: 39 YEARS, OCC: AGRICULTURE,
R/O TEGGALLI, TQ. SURAPUR-228227.

3. NAGAMMA
W/O BALAPPA AIKUR,
AGE: 51 YEARS, OCC: H.H.WORK,
R/O TALIKOTI, TQ. MUDDEBIHAL-586212.

Digitally signed by RENUKA
Location: High Court Of Karnataka

4. BASLAINGAMMA
W/O HANAMANTRAYA AIKUR,
AGE: 49 YEARS, OCC: H.H.WORK,
R/O TEGGALLI, TQ. SURAPUR-228227.

5. SHIVAYOGI
S/O RANGAPPA GOTAGUNAKI,
AGE: 64 YEARS, OCC: AGRICULTURE,
R/O BOMMANAHALLI,
TQ. MUDDEBIHAL-586212.

6. KASHIBAI
W/O SANGAYYA HIREMATH,
AGE: 50 YEARS, OCC: H.H.WROK,
R/O SUNGATHAN,
TQ. SINDAGI-586128.

7. BASAMMA
W/O CHANNAPPA DESAI,
AGE: 51 YEARS, OCC: H.H.WORK,
R/O TAKKALAKI,
TQ. B.BAGEWADI-586203.

8. BHAGYAVATI
W/O YANKAPPA MASARAKALL,
AGE: 37 YEARS, OCC: H.H.WORK,
R/O BOMMANAHALLI,
TQ. MUDDEBIHAL-586212

9. PRABHAKAR
S/O IRAPPA BADIGER,
AGE: 56 YEARS, OCC: TEACHER,
R/O INGALAERI,
TQ. MUDDEBIHAL-586212.

…RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE WRIT OF CERTIORARI QUASHING THE IMPUGNED ORDER DATED 06.12.2024 IN CIVIL MISC.NO.3/2019 PASSED BY THE SENIOR

CIVIL JUDGE AT MUDDEBIHAL AS PER ANNEXURE-C AND REJECT THE APPLICATION FILED BY THE RESPONDENT NO.1.

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

CORAM: HON'BLE MR JUSTICE R.NATARAJ

ORAL ORDER

The defendant in O.S.No.10/2017 on the file of Senior Civil Judge and JMFC, Muddebihal is before this Court challenging the order dated 06.12.2024 on an application filed by the plaintiff under Order IX Rule 4 of Code of Civil Procedure and setting aside the order dated 29.11.2018 dismissing the suit for non-prosecution and restoring it for consideration.

2. The suit in O.S.No.10/2017 was filed for specific performance of an agreement of sale purportedly executed by the defendants. The suit was contested by the defendants following which, the Trial Court framed the issues and set down the case for evidence. The plaintiff filed his examination in chief by way of an affidavit on 13.11.2018 and marked Ex.P.1 to Ex.P.24. This case was

then posted for further examination of PW.1. However due to the default of plaintiff and his Advocate in appearing before the Court the suit was dismissed for non-prosecution. The plaintiff then filed the C.Misc.No.3/2019 under Order IX Rule 4 of CPC. After service of notice of this application the defendants filed their objections. The Trial Court after considering the contentions urged, and the evidence adduced on the said application, allowed the petition in terms of the impugned order. The Trial Court while doing so, held as follows :-

> *"Upon considering the materials available on record, it is clearly goes to show that, the petitioner has filed this present petition praying this Court to set-aside the dismissal order dated 29.11.2018. On perusal of the Ex.P.1 it is clearly goes to show that, the suit of the plaintiff/petitioner was dismissed for non prosecution. When the case was posted for further chief of PW-1. The petitioner has filed this petition within limitation. There is no delay in filing this petition which clearly goes to show that, the petitioner is in diligent for conducting the suit. The petitioner deposed in his evidence that, on 29.11.2018 he remained absent due to his ill-health. The petitioner has not produced any document to show that, he was suffering from ill-health on 29.11.2018. The only non production of document is not a ground to disbelieve the evidence of the PW.1. Moreover, in this case the petitioner clearly stated that, he has filed a suit against the respondents/defendants for the relief of specific*

> *performance of contract. The suit was not decided on merits. Therefore, I am of the opinion that, if the petition is allowed no harm or loss caused to the respondents. On the other hand, if the petition is not allowed, the petitioner/plaintiff will be put irreparable loss, which can not be compensated in terms of money."*

Being aggrieved by the aforesaid order, the defendants are before this Court.

3. The learned counsel for the defendant No.1 contends that the plaintiffs had invoked a wrong provision of law and that there was no reason to recall the order of dismissal of the suit for non prosecution. She also contended that the plaintiff did not produce any documents to establish that he was prevented from sufficient cause in appearing before the Court to adduce further evidence.

4. A perusal of the impugned order shows that the petition was dismissed for non-prosecution in view of the non appearance of the plaintiff to lead further evidence. The plaintiff claimed that he could not appear before the court on 29.11.2018 in view of his ill-health. The Trial

Court has held that the contention urged by the plaintiff that he was prevented from sufficient cause from appearing before the Court, was plausible and therefore granted an opportunity to the plaintiff to contest the suit on merits.

5. In that view of the matter, there is no error committed by the Trial Court in restoring the suit by recalling its order dismissing the suit for non prosecution. There is no error warranting interference. Hence, the petition is dismissed.

Sd/-
(R.NATARAJ)
JUDGE

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List No.: 1 Sl No.: 30
CT:SI