

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 13TH DAY OF MARCH 2012

BEFORE

THE HON'BLE MRS.JUSTICE B S INDRAKALA

WRIT PETITION NO.43350 OF 2011 (GM-CPC)

BETWEEN:

ANNAVAR ADIKE COMPANY LTD
J C ROAD, SAGAR
SHIMOGA DISTRICT
REPRESENTED BY ITS
EXECUTIVE DIRECTOR
R V ASHOK S/O LATE S RAMAPPA
AGED ABOUT 53 YEARS
R/O SAGAR - 577 401S
SHIMOGA DISTRICT

... PETITIONER

(BY SRI:R V JAYAPRAKASH, ADV)

AND:

JAYENDRA H P
S/O PUTTASWAMY GOWDA
AGED ABOUT 45 YEARS
R/O HEGGARASE VILLAGE
KARUR HOBLI, SAGAR TALUK
SHIMOGA DISTRICT
PIN - 577 401

... RESPONDENT

THIS WP IS FILED UNDER ARTICLES 226 AND 227 OF
THE CONSTITUTION OF INDIA PRAYING TO QUASH ANNEXURE-
D THE ORDER DATED 27.07.2011 IN OS NO.79/2011 ON THE
FILE OF THE PRL. CIVIL JUDGE (JD) SAGAR AND ALLOW THE

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SAID APPLICATION AND RESTORE OS NO.79/2011 ON THE FILE OF THE PRL. CIVIL JUDGE (JD) SAGAR ON FILE.

THIS WP IS COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Heard the learned counsel for the petitioner. As the respondent herein has not yet come on record in the original proceedings namely in OS No.79/2011 on the file of the Prl. Civil Judge (Jr.Dn), Sagar, service of notice of this proceeding on the respondent is dispensed with.

2. On 25.07.2011, the petitioner herein filed an IA under Section 151 of CPC seeking to recall the order dated 25.07.2011 passed in OS No.79/2011 and to restore the suit to board contending that the counsel was engaged in another Court and he was unable to present before the Court when the case was called. Admittedly, the above application was filed on the very same day of passing of the order dismissing the suit for default.

3. The trial Court while observing that as per the amended provision of CPC, process fee is required to be

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paid within 7 days from the date of order and as the plaintiff has failed to comply with such provision and also rejecting the reasons assigned by the counsel in the memorandum of facts that he was engaged in another Court, and he was unable to attend the case when the case was called and the reason for non attendance when the case was called was bonafide and not intentional, dismissed the application filed by the plaintiff with costs of Rs.100/-.

4. On perusal of the certified copy of the order sheet in OS No.79/2011, it is seen that in fact the process fee was paid and summons was also issued to the defendant and the said summons so issued was returned unserved, as the defendant was not in station. Such endorsement is made in the order sheet dated 23.05.2011. Further, it is seen that in the said circumstances, on 28.06.2011, the trial Court ordered for re-issue of summons to the defendant, if the required process fee is paid. No doubt, the petitioner has not paid the required

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process fee within 7 days from the date of passing of the order, but, the submissions of the learned counsel for the petitioner that such observation of the Court for payment of process fee was probably not within the knowledge of the parties cannot be easily brushed aside. Further, considering the fact that the application for restoration was filed on the very same day on which the suit was dismissed for default, if an opportunity is given to the plaintiff to prosecute the suit by paying the required process fee in time and enable the case to be adjudicated on merits, no prejudice or hardship will be caused to either of the parties.

Hence the following:

O R D E R

The writ petition is disposed of by setting aside the order dated 25.07.2011 passed in OS No.79/2011 on the file of the Pri. Civil Judge (Jr.Dn.), Sagar and the said suit is restored to its original position with a direction to the

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petitioner to pay process fee immediately on such restoration.

Post OS No.79/2011 on the file of the said Court on 31.03.2012.

Sd/-
JUDGE

*bgn/-