

**IN THE COURT OF THE LXIII ADDL.CITY CIVIL &  
SESSIONS JUDGE (CCH-64) AT BENGALURU.**

Dated this the **13<sup>th</sup> of February, 2023**

**: Present :**

**Sri A.V. PATIL, B.Com., LL.B.,**  
LXIII ADDL.CITY CIVIL & SESSIONS JUDGE,  
BENGALURU CITY.

**OS NO.6464/2011**

Plaintiffs : Sri Ravi Kumar M.R. & Others  
(By Sri K. Vijayakumar, Advocate)

**Vs.**

Defendants : Sri Subramani M & Others  
(By Sri CTD, Advocate for D.1)  
(D.2 – Exparte)  
(By Sri MPN, Advocate for D.3)

**PARTIES TO I.A.**

Applicant/  
Defendant No.1 : Sri.M.Subramani

Vs.

Opponent/  
Plaintiffs : Sri.M.R.Ravi Kumar

**I.A. filed under Order 9 Rule 7 r/w Sec.151 CPC.**

The learned Counsel for the defendant No.1 filed this IA with a prayer to set-aside the order dated 13.06.2014, placing him ex-parte and permit him to participate in the trial in disposal of the case on merits for the reasons stated in the accompanying affidavit. Defendant No.1/M.Subramani, sworn to an affidavit and has stated that the suit was posted for appearance on 13.06.2014. He was not aware about the proceedings and plaintiffs have intentionally given wrong address to avoid service of summons. He has not at all received any notice/summons from the Court. He is residing in 1<sup>st</sup> Cross, 1<sup>st</sup> Main, near Nagalingeshwara Temple, Kundalahalli village, Bengaluru, but the plaintiff by giving wrong address has placed him ex-parte. Recently he came to know about the proceedings from his relatives. His absence is neither willful nor negligent. Hence, he prayed to allow the application as prayed.

2. Plaintiff No.2 resisted the application by filing objection statement and denied all the allegations made in the application as well as in the affidavit filed along with the said IA. According to him, defendant No.1 has filed the present IA after-thought and without any basis

when the matter posted for final arguments. The defendant No.1 has not approached the Court with clean hands and he has suppressed the material facts and therefore, is not entitled for any orders at the hands of the Court. After filing of the suit, the suit summons was issued to defendant No.1. Even after service of summons, the defendant failed to appear and therefore, he was placed ex-parte in the year June-2016 and the present application is filed in the month of March-2022. The present application is filed after a lapse of 8 years. The defendant No.1 and 2 are well aware and are having knowledge about the pendency of the suit from 2011. The defendant No.1 has filed this application only with an intention to protract the proceedings and to harass the plaintiff. Among other grounds prayed for dismissal of the IA.

3. Heard the arguments, perused the materials available on record.

4. In view of the arguments submitted by both sides, the points that arise for my consideration are:

- (1) *Whether the defendant No.1 has made sufficient grounds to set-aside the ex-parte order as prayed in the IA filed u/o 9 Rule 7 r/w Sec.151 of CPC?*

*(2) What order?*

5. My findings on the above points are as under:

Point No.1 : *In the affirmative*

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

### **REASONS**

6. **Point No.1:-** At the outset, it is necessary to note that the plaintiff has filed this suit against the defendants for the relief of declaration, permanent injunction and for other reliefs in the year 2011. The present IA has been filed when the matter posted for final arguments on 13.06.2014. On perusal of the records, it is noticed that the suit summons was sent to the defendant No.1 through RPAD and after receipt of the acknowledgment, the case was called out and as the defendant No.1 fails to appear and therefore, he was placed ex-parte on 13.06.2014. The present IA is filed on 24.03.2022. As rightly pointed out by the learned Counsel for the plaintiff, the present application is filed after a lapse of more than 8 years. In fact, the ground made out by the defendant No.1 is not sufficient to allow the IA. However, to avoid multiplicity of proceedings and to give one more opportunity to the defendant No.1, if the IA is allowed by imposing cost, it would serve the purpose. Having

regards to the fact that the present IA is filed after lapse of more than 8 years that too when the matter posted for final arguments, I proceed to pass the following;

**ORDER**

I.A. filed u/o 9 Rule 7 r/w Sec.151 CPC to set-aside the order dated 13.06.2014, is hereby allowed, subject to payment of cost of Rs.4000/-. Payment of cost is condition precedent.

It is made clear that the suit is of the year 2011 and therefore, defendant No.1 shall appear on all the dates of hearing and co-operate for disposal of the case without seeking any adjournment.

For payment of cost call on by

*(Typed by the Judgment Writer on my dictation, the transcript revised and then pronounced by me in open court on this the **13<sup>th</sup>** day of February 2023)*

**(A.V.PATIL)**  
LXIII ADDL. CITY CIVIL &  
SESSIONS JUDGE, (CCH-64),  
BENGALURU CITY.