

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 30TH DAY OF AUGUST 2013

BEFORE

THE HON'BLE MR. JUSTICE H. G. RAMESH

WRIT PETITION Nos.19794 & 38538 OF 2013 (GM-CPC)

BETWEEN:

D.P.MUNIYAPPA
S/O LATE RAMAIAH
HINDU, NOW AGED 89 YEARS
R/OF RUDRAPURA VILLAGE
NEAR CHANDRAPPA CIRCLE
TAVAREKER HOBLI
BANGALORE SOUTH TALUK
... PETITIONER

(BY SRI K.N.PRAKASH, ADVOCATE)

AND:

1. SAMPANGIRAMAIAH
S/O D.P.MUNIYAPPA
HINDU, NOW AGED 42 YEARS
 2. SMT. MANJAMMA
D/O D.P.MUNIYAPPA
HINDU, NOW AGED 37 YEARS
 3. NAGARAJ
S/O D.P.MUNIYAPPA
HINDU, NOW AGED 35 YEARS
 4. PUSHPALATHA
D/O D.P.MUNIYAPPA
HINDU NOW AGED 30 YEARS
 5. G.V.SATHYANARAYANA
S/O G.E.VENKATESH
HINDU, NOW AGED ABOUT 58 YEARS

6. G.V.SAMPATHBABU
S/O G.E. VANKATESH
HINDU, NOW AGED 54 YEARS
ALL ARE R/OF CHUNACHANAKUPPE VILLAGE
TAVAREKERE HOBLI, BANGALORE SOUTH TQ.
7. M.P.VENKATESHAMURTHY
S/O LATE PUTTASWAMAIAH
HINDU, NOW AGED 67 YEARS
R/AT MALLATHAHALLI
I MAIN, NEAR GOVERNMENT SCHOOL
BANGALORE – 560 066
8. SMT. SHANTHIDEVI
W/O MASUDDI LAL
HINDU, AGED 91 YEARS
R/AT HANSI ROAD
BHIVANI, DERHADUN

REPRESENTED BY HER G.P.A HOLDER
SMT. REENU PAUL
W/O VIJENDRA PAUL
HINDU, AGED 50 YEARS
R/AT HANSI ROAD
BHIVANI, HARIYANA STATE

PRESENTLY R/AT FLAT NO.104
SAIDEEP HORIZON
WINDTONNEL ROAD, BANGALORERESPONDENTS

THESE WRITS PETITION ARE FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS IN O.S NO.7/08 PENDING ON THE FILE OF THE PRINCIPAL SR. CIVIL JUDGE AND JMFC, RAMANAGARA DISTRICT SITTING AT MAGADI AND SET ASIDE THE COMMON ORDERS PASSED ON I.A. Nos.7 AND 8 DATED 26.2.13 CONTAINED AS ANNEXURE-F BY ALLOWING THE SAID APPLICATIONS BY PERMITTING HIM TO PARTICIPATE IN THE FURTHER PROCEEDINGS ON ACCEPTING HIS WRITTEN ST. BY SETTING THE EXPARTE ORDER PASSED AGAINST HIM.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

O R D E R

H.G.RAMESH, J. (Oral):

These writ petitions are by defendant No.3 in the suit in O.S. No.7 of **2008** and are directed against an interlocutory order dtd. 26.02.2013. By the impugned order, the trial court has dismissed I.A. Nos. 7 & 8 filed by him to set aside the order placing him *ex parte* and to permit him to file his written statement.

2. I have heard the learned counsel appearing for the petitioner and perused the impugned order. It is relevant to refer to the following reasoning of the trial Court in dismissing the applications:

“9.....

However, for receiving written statement after prescribed period one has to have valid and acceptable reasons. Here in the case on hand 3rd defendant no doubt states that as he was suffering from ill-health etc., but they are not of the year 2008. The 3rd defendant remained absent from 2008 till 2012. No explanation is forthcoming as to why he has not filed written statement all these years. Even the medical

documents produced is for the year 2011 and it never shows that for preceding years he was hospitalized etc. Considering all these facts this court is of the view that I.A. 7 and 8 are meritless applications. The reasons stated in these two applications are contradictory to each other and they are not acceptable reasons. For the discussions made above, considering all these facts this court is of the view that the defendant 3 has not made out grounds for allowing these two applications.”

(Underlining supplied)

It is relevant to state that the petitioner was served with the suit summons on 04.02.2008.

3. I have examined the matter in the light of the principles laid down by the Supreme Court in *Surya Dev Rai vs. Ram Chander Rai* (AIR 2003 SC 3044) relating to exercise of jurisdiction under Articles 226 & 227 of the Constitution of India pertaining to interlocutory orders passed by Courts subordinate to the High Court. In my opinion, the impugned order does not suffer from any error of jurisdiction or error apparent on the face of the record to warrant

interference under the extraordinary jurisdiction of this Court under Articles 226 & 227 of the Constitution of India. The Writ Petitions are accordingly dismissed.

Petitions dismissed.

**Sd/-
JUDGE**

BNS