



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

COMMERCIAL APPEAL NO. 117 OF 2026

BETWEEN:

1. THE SECRETARY
PUBLIC WORKS DEPARTMENT
VIKASA SOUDHA
AMBEDKAR VEEDHI
BENGALURU - 560 001
2. THE CHIEF ENGINEER
PUBLIC WORKS
PORTS AND INLAND WATER
TRANSPORT DEPARTMENT
K.R. CIRCLE
BENGALURU - 560 001
3. THE EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
HASSAN DIVISION
HASSAN - 573 211

...APPELLANTS

(BY SRI ADITYA VIKRAM BHAT, AGA)

AND:

1. M. JAGANNATH
S/O P. MUNIVENKATAPPA
AGED ABOUT 46 YEARS
CLASS-I CONTRACTOR
RESIDING AT NO.17





38TH CROSS, 8TH BLOCK
JAYANAGAR
BENGALURU - 560 070

...RESPONDENT

(BY SRI K.N. PHANINDRA, SENIOR ADVOCATE AW
SRI KARTHIKEYAN B.S., ADVOCATE)

THIS COMMERCIAL APPEAL IS FILED UNDER SECTION 13 (1) OF COMMERCIAL COURTS ACT, 2015 PRAYING TO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 11.09.2024 IN COMMERCIAL O.S. NO.64/2020 PASSED BY THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, HASSAN & ETC.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

ORAL JUDGMENT

(PER: HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE)

1. The appellants have filed the present application (I.A No.1/2026) seeking condonation of the inordinate delay of 444 days in filing the above-captioned appeal under Section 13(1A) of the Commercial Courts Act, 2015. The only explanation provided by the appellants for this inordinate delay is that the appellants were not aware of the judgment and decree dated 11.09.2024 as the suit summons were not personally served on the defendants.



2. Paragraphs 5 and 6 of the affidavit affirmed in support of the application seeking condonation of delay (I.A No.1/2026) read as under:

"5. I submit that as could be seen from the Order sheet of the Commercial O.S No.64/2020 on the file of the learned Principal District and Sessions Judge, Hassan, the suit summons / notice issued by the Trial Court has been served only in the office of the Appellants No.1 to 3, but not served personally. The Order Sheet of the Trial Court further reveals that on 02.06.2022, Smt. HSK for DGP was present and filed memo of Appearance on behalf of the Defendant No.1 and accordingly, case was adjourned to 01.07.2022 for written statement of the Defendant No.1. On 01.07.2022, learned DGP has filed an application under Order 9 Rule 7 of CPC along with Memorandum of Facts to set-aside the ex-parte of Defendant No.2 and 3 and according the application came to be allowed, set-aside the order of ex-parte of the Defendant No.2 and 3. As per the request, the Trial Court has adjourned the above case to 13.07.2022 for filing Written Statement for Defendants No.1 to 3. On 13.07.2022, the case was again adjourned to 27.07.2022 for filing Written Statement for Defendants No.1 to 3.

6. I submit that as could be seen from the Order Sheet dated: 13.09.2022 and 25.01.2022, it is mentioned that Defendant Represented and Represented by DGP respectively, except these two representations, from 27.07.2022 till the date of pronouncement of Judgement on 11.09.2024, it is mentioned that "the learned DGP for the Defendants No.1 to 3 is absent". I respectfully submit that due to lack of service of suit summons personally on the Defendants and lack of information about pendency of the suit before the Trial Court, we the defendants could not contest the case on merits and based on the evidence and materials available on record, the Trial



Court has passed the impugned Judgement and Decree on 11.09.2024."

3. However, we find that the aforesaid averments are inaccurate and misleading. The learned counsel appearing for the respondent has filed a memo furnishing copies of the order sheets. The same indicates that summons in the suit was issued in October 2014 by the learned Senior Civil Judge and JMFC, Chennarayapattana. The appellants (hereafter referred to as **defendants**) had filed the written statement to contest the same, and trial had commenced. Parties had produced their documents. The evidence of the witnesses examined by the plaintiff was recorded, and they were also cross-examined. The defendants had also examined witnesses on their behalf. The proceedings were listed on several dates.

4. The matter was listed before the learned Senior Civil Judge on about 56 separate occasions. Thereafter, the matter was fixed for arguments, and the order sheet indicates that the same was listed on about nineteen separate occasions.

5. The proceedings before the learned Senior Civil Judge spanned almost six years from the year 2014 to 2020. The learned



Senior Civil Judge transferred the suit to the learned Commercial Court by an order dated 18.08.2020. Thus, at that stage, all that remained for the parties was to advance the final arguments.

6. The suit was listed before the Commercial Court on 03.10.2020 and the learned Commercial Court passed an order issuing notice to the parties and listed the matter on 03.11.2020. The matter was adjourned from 03.11.2020 to 06.01.2021. On 06.01.2021, the learned counsel for the plaintiff was present. Notice to defendant No.3 had been served, but none was present on its behalf (Executive Engineer, PWD, Hassan). The notices to defendant Nos.1 and 2 were not returned, and none was present on their behalf. Awaiting the service report of defendant Nos.1 and 2, the suit was listed on 29.01.2021. On this day, the court noted that the defendants had been served with notices, however, none was present on their behalf. Notwithstanding the service, the court issued fresh notice to the defendants and listed the suit on 26.02.2021. On that day, the hearing was once again deferred to 12.03.2021. On 12.03.2021, no one was present on behalf of the plaintiff and the defendants. On 01.04.2021, the court once again directed the issuance of a fresh notice to the defendants and



adjourned the hearing to 22.04.2021. Apparently, a fresh notice, as directed on 01.04.2021, was not issued. Thus on 22.04.2021, the court once again directed the issuance of a fresh notice to the defendants and listed the matter for 08.06.2021. However, on that date, the matter was not called due to the COVID-19 outbreak. Once again, fresh notices were issued to the defendants, and the matter was directed to be called on 21.10.2021. On that day, none was present on behalf of the parties. The court noted that the notice issued to defendant No.3 had been served and, therefore, it was proceeded *ex parte*. The hearing was deferred, awaiting the service report regarding the notices issued to defendant Nos.1 and 2, and the hearing was deferred to 18.11.2021. On that date, the learned Judge did not hold the court and, therefore, the matter was adjourned to 16.12.2021. On 16.12.2021, the court noted that the summons to defendant No.2 was served. However, the notice issued to defendant No.1 was returned unserved for want of a plaint copy. Thus, defendant No.2 was proceeded against *ex parte*.

7. On 23.02.2022, once again, notice was issued to defendant No.1, and the matter was deferred to 24.03.2022. On 24.03.2022, again, none was present on behalf of the defendants, and the



matter was adjourned to 19.04.2022. None was present on behalf of the parties on 19.04.2022 and the hearing was adjourned to 02.06.2022.

8. On 02.06.2022, counsel appeared on behalf of defendant No.1, and the court directed that a written statement by defendant No.1 be filed on 01.07.2022. This was a clear error as the written statement had been filed. In the meantime, the learned DGP had filed an application under Order IX, Rule 7, of the Code of Civil Procedure, 1908 [**CPC**], for setting aside the order by which defendant Nos.2 and 3 were proceeded *ex parte*. The learned Commercial Court allowed the said application and set aside the order proceeding *ex parte* the said defendants. However, on this day, the learned DGP requested for time to file written statement on behalf of the defendants. The said request was acceded to and time was granted to file written statement by 13.07.2022. As noted above, this was erroneous as the suit had been transferred in the stage of final hearing. This error persisted over the next few hearings (hearings held on 13.07.2022 and 25.08.2022). The matter was also erroneously placed for evidence on further two



occasions (03.09.2022 and 13.09.2022). However, none was present on behalf of the parties.

9. On 12.10.2022, the court noticed that the entire evidence had been closed earlier and, therefore, posted the matter for final arguments on 02.11.2022. On that day, the parties were duly represented and prayed for time to advance submissions, and the matter was listed for arguments on 23.11.2022. It is noted that the suit was listed on two further occasions, but there was no representation on behalf of the parties, and the hearing was deferred to 25.01.2023. On that day, DGP was present on behalf of the defendants but, none was present on behalf of the plaintiff. The reason for the plaintiff not being represented was that the learned counsel had expired on 26.05.2022. Therefore, on 24.02.2023, fresh notices were issued to the plaintiff. Thereafter, the matter was listed for arguments on several occasions but, was adjourned as the parties were not present.

10. Finally, the learned Commercial Court heard the arguments and passed the impugned order. The impugned order was pronounced in court on 11.09.2024.



11. In view of the above, the averment that the notices had not been served on the appellants, is erroneous. Not only was the summons issued after the suit was transferred to the learned Commercial Court, but notices were also issued on more than two occasions and duly served on the defendants. They were also represented by DGP on two occasions. In the aforesaid context, the contention that the appellants (the defendants in the suit) were not aware of the impugned judgment cannot be accepted.

12. In view of the above, the application seeking condonation of the delay is rejected. Consequently, the appeal is dismissed as well.

13. The pending interlocutory application also stands disposed of.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**