

KABG500006312025



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, GOKAK.**

BEFORE: Sri.Umesh S. Atnure,

B.Com.LL.B.(Spl)

R.A.No.22/2025

DATED THIS 15th DAY OF JULY-2026

Appellant: 1. Bhimagouda S/o. Laxmanagouda @ Laxman
Patil @ Naik,
Age: 52 years, Occ: Agriculture,
R/o: Hirenandi, Tq: Gokak.

V/s

Respondents: 1. Smt. Sumitra W/o. Babasab Desai,
Age: 49 years, Occ: Agriculture,
R/o: Jambagi, Tq: Bijapur.

2. Smt. Bayavva W/o. Laxmanagouda @ Laxman
Patil @ Naik,
Age: 45 years, Occ: Agriculture,
R/o: Hirenandi, Tq: Gokak.

3. Smt. Taisab W/o. Hanamanthagouda
Patil @ Naik,
Age: 55 years, Occ: Household,
R/o: Hirenandi, Tq: Gokak.

**PARTIES TO I.A.No.I FILED UNDER SECTION 5 OF
LIMITATION ACT**

Applicant: 1. Bhimagouda S/o. Laxmanagouda @ Laxman
Patil @ Naik,

.....Applicant

Vs.

Opponents: 1. Smt. Sumitra W/o. Babasab Desai
and others

.....Opponents

**ORDERS ON I.A.No.I FILED UNDER SECTION 5 OF
LIMITATION ACT**

The appellant has filed this present application U/Sec 5 of Limitation Act praying to condone the delay of 180 days in filing this present appeal.

2. In the accompanying affidavit, the appellant contended that he has preferred this present appeal aggrieved by the judgment and decree passed by the IInd Additional Civil Judge and JMFC, Gokak in OS.No.177/2017 on 11.11.2024. He contended that after service of suit summons the defendants No.1 and 2 have appeared through their counsel but they have colluded with the plaintiff i.e., present respondent No.1 and they did not file their written statement. From the year 2017 to 2023 he was residing at his

wife's parental house at Nuggikeri village, Dharward district due to his ill-health. The suit summons nor appeal memo are not served on him. He came to his village in the year 2023 at that time he did not know about the suit filed by the plaintiff colluding with the defendants No.1 and 2. Recently one month back the respondents were canvassing in their village stating that they become owners of the suit property by virtue of the court decree, they are going to sell the suit property anybody as per their will and wish. Then he met his counsel and search from the suit number and appeal number and obtained certified copies, thereafter he came to know about the preliminary decree. Hence delay has been caused in filing this appeal the delay is not intentional and deliberate one as such he filed this present application for condoning delay of 180 days in filing this appeal. He has got fair chance success in this appeal. If the delay is condoned no loss or hardship would be caused to the respondents if not he will be put to irreparable loss which cannot be compensated in terms of money. Hence, prayed to allow the application.

3. The respondents have filed objections to this application by denying entire contention of the appellant. Further the respondents contended that appellant has not produced single

document for condonation of delay. In order to cause loss to them the appellant has filed this present application hence, prayed to reject the application.

4. The learned counsel for the appellant has filed written arguments on IA.No.1. I have heard the arguments of the learned counsel for the respondents.

5. The points that arise for my consideration are;

1. Whether the appellant has made out grounds to condone delay of 180 days in preferring this present appeal?

2. What order?

6. My findings on the above points are:

POINT No.1: In the Affirmative

POINT No.2: As per final order

for the following;

REASONS

7. **POINT No.1:** The respondent No.3 filed a suit in OS.No.177/2017 against the present appellant who is the defendant No.3 and the respondent No.2 and 3 are the defendants No.1 and 2 in OS.No.177/2017. The said suit was filed by present respondent

No.1 seeking the relief of partition and separate possession. The said suit was came to be decreed on 11.11.2024 this present appeal is filed on 29.04.2025. As per Article 116 of Limitation Act an appeal is to be filed within 30 days from the date of decree or order. In this case the judgment was passed on 11.11.2024, 30 days period expires on 11.12.2024. The appellant suppose to file this appeal within 11.12.2024 but he filed the same on 29.04.2025, there is a delay of 139 days in preferring this appeal not 180 days as contended by the appellant.

8. The appellant contended that since 2017 to 2023 he was residing at his wife parental village Nuggekeri village, Dharward district due to his ill-health and in the year 2023 he came back to his village at that time he was not knowing about suit filed by the present respondent No.1 against him and respondents No.2 and 3 about one month back the respondents were canvassing in their village stating that they become owners of the suit property by virtue of the court decree they are intending to sell the suit property at their will and wish. Then he approached his counsel and search for the suit and appeal numbers and thereafter obtained the certified copies and filed this appeal. The appellant contended that due to above said reasons he could not able to file

this appeal within the period of limitation. The delay is not intentional one and for the above said bonafide reasons. The respondents have denied the entire contention of the appellant and nothing worth is brought on record to show that the passing of judgment and decree in OS.No.177/2017 on 11.11.2024 was well within the knowledge of the present appellant. Further by perusing the judgment passed by the trial court in OS.No.177/2017 it is clear that the present appellant who was defendant No.3 in that suit was placed exparte. Hence, it shows that the present appellant was not contested the suit and further it is clear that due to his ill-health he was not residing at Hirenandi village and he was residing in his wife's parental house from 2017 to 2023, it shows that due to not having knowledge about the suit in OS.No.177/2017 he was not having about the knowledge of the said suit and judgment and decree passed in that suit. Now recently he came to know about the judgment and decree passed in OS.No.177/2017 and obtained certified copies and filed this present appeal. By perusing the contention of the appellant it is clear that the appellant has stated sufficient cause for not filing this appeal well within the period of limitation and due to lack of knowledge about the decree passed in OS.No.177/2017 he could not able to file

the appeal well within the period of limitation. The reasons assigned by the appellant are acceptable one. If the delay of 139 days is condoned it will not cause any loss or injury to the respondents, if not definitely it will cause great loss and injury to the appellant and he loose his rights in the suit property. In the interest of justice and in order to provide an opportunity to the appellant to contest the matter it is just and necessary to condone the delay of 139 days in preferring this appeal.

9. The learned counsel for the appellant relying on the authority reported in *2024 (3) KCCR 3055 in between J. B. Bilwashree Vs. G. V. Devadas and others*, wherein the Hon'ble High court of Karanataka pleased to condone the delay of 2098 days in preferring the appeal holding that when the reason assigned by the appellant for condoning the delay are acceptable one then the delay is to be condoned and further it is also stated that "Every Day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner. Hence, by relying on the above said authority I am of the considered view that the appellant has made out

sufficient cause to condone delay of 139 days in filing this present appeal.

10. The learned counsel for the respondents relying on the authorities reported in 2014 (4) KCCR 3865 in between *Narashimha @ Narasimaiah (Since deceased) by his LRs Vs. Jagadish and another*, wherein the said appeal there were 12 appellants, one of the appellant filed application for condoning delay of 52 days, wherein it is held that if the person who filed the application was unable to take steps to file appeal in time, it is not known why eleven others did not evince interest to file appeal in time and there is no sufficient cause is not shown by the other appellant, it is not possible to accept the plea of that one appellant that he could not prefer the appeal within time and delay is remaining unexplained as such dismiss the application filed Under Section 5 of Limitation Act and also appeal is dismissed, due to negligence, inaction and lack of bona fides. But in this present case on hand, the appellant was the defendant No.3 in the original suit and he shows sufficient cause to show that due to his ill-health he was staying in the parental house of his wife from the year 2017 to 2023 and in the year 2023 he came to his native place and recently about one month back he came to know that the respondents are

canvassing in the village that by virtue of the court decree they become owners of the suit property and they are intending to alienate the suit property. This reason shows that the appellant was not residing in his native place, as such he was not having knowledge about suit filed in OS.No.177/2017 hence he could not able to appeal before the court and recently about one month back he came to about the preliminary decree passed in OS.No.177/2017. Hence, I am of the considered view that with due respect to the above said authority same is not applicable to present facts and circumstances of the case. Hence, same is not applicable to this present case on hand.

11. Further they contended that the appellant has not shown any single piece of doctrine to condone the delay. As such the application is not maintainable one and only to harass them this present application is filed by the appellant. In support of this contention the respondents relied on the authority reported in 2014 (3) KCCR 2640 in between *A. C. Francis (Since deceased) by his LRs VS. B. K. Surendrakumar and another*, wherein the appellants were failed to convenience to the court for delay of 832 days in filing the appeal. As such their application was rejected. Further respondents relied on the authority reported in 2009 (5) KCCR

3328 in between Pundalik Jalam Patil (D) by LRs Vs. Executive Engineer, Jalagaon Medium Project and another, wherein it is held that in event or circumstances arising after the expiry of limitation cannot constitute sufficient cause. The correspondence continued from the date of award to another 15 months. The appeal filed along with condonation of delay after another 9 months held that there is no sufficient cause to condone the delay. In the said case after passing the award there were the correspondence were continued for another 15 months and thereafter 09 months the appeal is filed wherein it is held that even after passing the award till 15 months correspondence were took place in between appellant and respondent and the appellant was having knowledge about the award passed by the respondents but they have kept quire during the said period of 15 months and after 09 months they have filed the appeal. As such the Hon'ble Apex court was decline to condone the delay but in this present case on hand there is no such circumstances were arose to the appellant to show that he was having knowledge about the judgment and decree passed in OS.No.177/2017. Under such circumstances, with due respect to the above said authority, I am of the considered view that same is not applicable to the present case on hand and also same is not

helpful for the respondents in support of their contention. Hence, by perusing the contention of both the parties, I am of the considered view that the appellant has shown sufficient cause for causing delay of 139 days in preferring this present appeal. If the delay is condoned it will not cause loss or injury to the respondent. Hence, I am of the considered view that the appellant has made out grounds to condone the delay of 139 days in filing preferring this present appeal. Hence, **I answered the Point No.1 in the Affirmative.**

12. POINT No.2: For the aforesaid findings, I proceed to pass the following:

ORDER

The application filed by the appellant
Under Section 5 of Limitation Act at IA.No.I
is hereby allowed.

The delay of 139 days in preferring this
appeal is hereby condoned.

Call for LCR by 07.08.2026.

(Dictated to the Stenographer, transcribed by him on computer, revised, corrected and then pronounced by me in the open Court on this the 15th day of July, 2026.)

(Umesh S. Atnure)
Prl. Senior Civil Judge Gokak.