

04-09-2024:

ORDERS ON I.A.No.I

Appeal is filed by the appellants/defendant Nos.2(a) to (e) feeling aggrieved by the Judgment and decree passed in suit in OS No.171/2011 dated 28-09-2011.

2. The appellants were the defendant Nos.2(a) to 2(e) in the original suit. Along with the appeal IA No.I is filed by the appellant seeking condonation of delay. IA No.I is filed U/O 41 Rule 3A of CPC R/w Section 5 of The Limitation Act by the appellants to condone the delay of 39 days in

preferring the appeal.

3. In the accompanying affidavit the appellant No.2 Sri. Siddayya Mrutyunjay Hiremath has sworn to the fact that he has filed the suit for permanent injunction in respect of suit properties against them and another defendant in respect of the suit properties. After the Trial court has decreed the suit of the plaintiff on 28-09-2022. After decreeing the suit he applied for certified copy of the Judgment and decree on 15-10-2022 and the same is supplied on 31-10-2022. After that he has not met counsel due to busy in agricultural work and also it took some time for them to arrange the expenditure and litigation expenses. Hence there is delay of 39 days in filing the present appeal.

4. It is further stated that there is no intentional or deliberate delay on his part in approaching the court.

Hence it is very much necessary to condone delay of 39 days in preferring this appeal. If this application is not allowed he will be put to greater hardship. Hence prayed for allowing the IA.

5. Respondents are not not filed objections to IA.

6. In order prove the case, the appellant has examined himself as AW.1, but no documents got marked.

7. Heard and perused.

8. The following points arise for consideration:

1) Whether the appellants have shown sufficient cause / reasons for condoning the delay in filing the appeal ?

2) If so what order or direction ?

9. 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

10. **Point No.1:-** The impugned judgment was passed by the trial court in OS No.171/2011 dated 28-09-2011. The present appeal is filed on 06.12.2022. As per the provisions of Limitation Act the appeal should have been filed within a period of one month from the date of judgment. If there is vacation during intervening period, the appeal should have been filed on the re-opening day. However, in the case on hand the appeal is filed beyond the period of limitation. There is delay of about 39 days.

11. AW.1 Sri. Siddayya Mrutyunjay Hiremath has deposed that he could not meet his earlier counsel due to busy in agriculture work and also took some time for him to arrange the expenditure and litigation expenses. There is no intentional or deliberate

delay in his part in approaching this court. Hence it is very much necessary to condone the delay of 39 days in preferring this appeal.

12. In the cross-examination by the learned counsel for the respondents AW.1 stated that the remaining appellants have given him authority letter. He stated that he was present on every date of hearing in OS No.171/2011. He stated that he did not know on which the judgment was pronounced. He admitted that in the appeal memo he was written the judgment in O.S. No.171/2011 was pronounced on 28.09.2011. He stated that after 40 days of the judgment passed in OS No.171/2011 he has preferred the appeal. He did not know the respondent No. 1 has filed the case against them as he has violated the order of the trial court. He stated that he was engaged in the agriculture work as such he did not know about the judgment passed.

13. Apparently in the trial court the present appellants were the defendant Nos.2(a) to (e). On perusal of the judgment it is apparent that the appellant No.2 has examined himself as AW.1 and also cross-examined and he had knowledge about the case. Moreover, the appellants are busy in their agriculture works as such they have not met their counsel. There is no intentional or deliberate delay on his their part in approaching the court

14. In the judgment in the case of State of Karnataka Vs. Annegowda by LR's reported in ILR 1985 Karnataka 2121, it is observed that, In construing 'sufficient cause' within the scope of Section 5 of the Limitation Act, the Court must give a liberal construction to the said words. Each case must be judged in the context of the subject matter involved. The Legislature has for the best of all reasons left those words undefined. It has conferred judicial power and discretion to courts

to condone the delay. The approach of the courts in considering the cause shown should therefore, be consonant with truth and justice with a view to advance substantial justice. They are the fundamental principles for which Courts have been established. If Courts fail to adhere to these principles, the people will lose confidence in courts and the law may fall into disrepute.

15. It is a settled principle of law that, when considering the application for condoning the delay that is on the point of limitation the courts must have a liberal approach and must not be too technical. Explaining the cause of delay does not mean that, every day's delay has to be explained and accorded for. It is sufficient cause to condone the delay since appellant had no knowledge about the suit at all.

16. There is delay of about 39 days. There is no gross negligence or deliberate in action or lack of bonafides

in this case. Thus having regard to the dictum of the Hon'ble Supreme court which has always taken a broad and liberal view so as to advance substantial justice instead of terminating a proceeding on a technical ground like limitation, this court is also of the opinion that there are sufficient reasons to condone the delay in this case.

17. Hence, the delay has to be condoned because, it will accord the final opportunity for the appellants and respondents also to put forth their contentions as there are rival claims regarding gift deeds.

18. Even otherwise as the appeal involves question of right over immovable property a liberal approach is to be taken to condone the delay. A too technical approach in such matter will result in injustice to the parties. Delay is the matter of time and it can be compensated with costs. Therefore, in the interest of justice the delay caused

needs to be condoned. Therefore this court is of the considered opinion that in this case, delay has to be condoned. Hence, point No.1 under consideration is answered in the affirmative.

19. **Point No.2:-** In view of finding on point No.1, I proceed to pass the following.

ORDER

I.A No.1 is allowed. Accordingly the delay caused in filing the appeal is condoned on cost of Rs.1,000/-.

(Ravi Babu Chawan)
Senior Civil Judge
Bailhongal.