

Order under Section 5 of Limitation Act R/w Section 151 of CPC

The Appellant has filed this application to condone the delay of 02 years, 09 months, 10 days delay in preferring this appeal.

2. Along with the application, appellant has filed affidavit.
3. On the other hand, the respondent has filed objection.
4. Heard the arguments of both learned counsels and perused materials available on record.
5. Points that would arise for final determination of this application are as follows.

1. *Whether appellant has made out sufficient grounds to allow the said I.A ?*
2. *What Order ?*

6. My answer to the above points are as follows.

Point No.1 : In the Affirmative.
Point No.2 : As per final order, for the following.

REASONS

7. **Point No.1 :-** The Appellant has filed affidavit stating that, he has filed the appeal aggrieved by the judgment and decree passed in O.S No.246/2014 dated 04.01.2022 on the file of II Addl. Civil Judge and JMFC, Ballari. Further, the Hon'ble Court without looking substantial materials and without appreciating the evidence, orally and documentary and without looking the pleadings properly and without framing the proper points for proper adjudication, observed in the impugned judgment and without considering the substantial materials of the written statement and the cross examination of PW.1 to 9 and Ex.P.1 to 24

wrongly held issue No.1 to 5 in affirmative and wrongly decreed the suit. He being aggrieved from the impugned judgment and decree, he preferred the appeal amongst the other grounds of appeal. Further he has approached the counsel to know about the pending case and he came to know the suit was disposed off on 04.01.2022 and advised his counsel to file appeal. Further in the year 2020, due to Covid-19 side effects and weakness, he was unable to approach his counsel to know about the case to file appeal within time. Therefore, there is a delay of 29 months from the date of judgment and decree. Hence, prayed to allow this application.

8. The respondent has filed any objection to the said application contending that, the grounds of appeal which is not necessary for condoning the huge delay of 2 years 9 months 10 days. Further he got information of the disposal of the suit in the year 2024 to disprove the same. The appellant through his counsel has filed copy application on 04.01.2022 and obtained judgment and decree immediately. He got the knowledge of the disposal of the suit in the April, 2024. The judgment and decree passed on 04.01.2022, this judgment is passed only after closure of Covid-19. The respondents filed execution petition No.115/2024 on the file of trial Court. He has engaged his counsel and filed his vakalath in the said execution petition and case is posted for objections. Without any sufficient explanation for condoning the delay, appellant is not entitled for the relief of condoning the huge delay. Hence prayed to dismiss the application.

9. On perusal of the material available on record by the appellant side would satisfy the Court that, delay caused by the

appellant side to file appeal is not intentional one, due to Covid-19 side effects and weakness, he could not able to file appeal within the stipulated time. It is necessary to decide the case on merits. Hence, I am of the opinion that, the appellants have made out sufficient grounds to allow IA No.I to condone the delay of 2 years, 9 months 10 days in filing of the appeal. Accordingly, **Point No.1 is answered in the Affirmative.**

10. Point No.2 :- In view of the discussion made above, I proceed to pass the following ;

ORDER

I.A No.1 filed by the appellant no.2 under Section 5 of Limitation Act R/w Section 151 of CPC, is hereby allowed on cost of Rs.2,000/- to respondent.

Delay of 2 years, 9 months 10 days in filing the appeal is condoned.

No order as to costs.

(Dictated to the stenographer directly on computer, corrected by me and singed and then pronounced in the open court on 2nd day of June 2026)

PRIYANKA T. K.

II Addl. Sr. Civil Judge, Ballari.