

KACM200007852022



IN THE COURT OF SENIOR CIVIL JUDGE,
AT: KADUR

Present:- Sri. IRFAN.

B.A., LL.B.,

Senior Civil Judge & JMFC,
Kadur, Chikkamagaluru District.

Dated: this the 5th August - 2024

R.A..No.94/2022

Appellant:-

Smt. L.K. Anusuyamma,
D/o Late Kariyappa,
W/o Hanumanthappa,
Aged about 33 years,
House-wife,
R/o Suladimmanahalli Village,
Banavara Hobli,
Arsikere Taluk,
Hassan District.

(By: Sri. N.P. Sheshappa, Advocate)

V/s

Respondents:-

1. Smt. Channamma,
W/o Late Kariyappa,
Aged about 76 years,
House wife,

2. Sri. Jayappa,
S/o Late Kariyappa,
Aged about 56 years,
Agriculturist,
3. Smt. Meenakshamma,
D/o Late Kariyappa,
Aged about 51 years,
House wife,
R/o Kanakatte Village at & Post,
Kanakatte Hobli, Arsikere Taluk,
Hassan District.
4. Sri. Yogeshappa,
S/o Late Kariyappa,
Aged about 46 years,
Agriculturist,
5. Sri. Eshwarappa,
S/o Late Kariyappa,
Aged about 41 years,
Agriculturist,

Respondents No.1, 2, 4 and 5
are R/at Linglapur Village,
Singatagere Hobli, Kadur Taluk,
Chikkamagaluru District.

(Respondents No.1 & 2 by: Sri. C.R. Manohara, Advocate).
(Respondents No.3 to 5 – Absent)

RANK OF THE PARTIES ON I.A.NO.I

Applicant/
Appellant : Smt. Anusuyamma.

V/s

Opponents/
Respondents.

: Smt. Channamma & others.

i	<i>Provision under which the application is filed</i>	<i>U/S 5 of Limitation Act</i>
ii	<i>Relief sought for</i>	<i>Condone the delay</i>
iii	<i>The date on which the application is filed</i>	<i>16.11.2022.</i>
iv	<i>Number of the application</i>	<i>01</i>
v	<i>The date on which the objections are filed by different opponent</i>	<i>15.03.2023. by the respondents No.1 & 2</i>
vi	<i>The date on which the orders were passed on the said application</i>	<i>05.08.2024.</i>

ORDERS ON I.A.I

This interim application has been filed by the appellant under Section 5 of the Limitation Act seeking to condone the delay of 91 days in preferring this appeal.

2. This application is accompanied by an affidavit filed by the appellant. The gist of the application averments is that the appellant has preferred this appeal challenging the judgment and decree of the trial court in OS No.592/2019, dated 01.08.2022. It is contended that due to family problem and due to my personal inconvenience and

inadvertence, she could not contact her counsel and file the appeal within time. It is specifically contended that the delay is caused for the aforesaid bonafide reason and therefore, it is sought to condone the delay of 91 days in preferring this appeal.

3. This application has been resisted by the respondents No.1 and 2 vide formal objections wherein they have specifically denied all the contentions raised by the appellant under this application as false and frivolous and it has been specifically asserted that the appellant has sworn to a false affidavit and there are no grounds whatsoever made out by the appellant to condone the delay. The delay in filing the appeal is due to the negligence of the appellant and not due to the bonafide reasons. Accordingly, sought to dismiss the application.

4. Heard Sri.NPS, Advocate for appellant and Sri. CRM for the respondents No.1 and 2. Perused the case records.

5. The appellant herself got examined as PW-1 and produced medical certificate as Ex.P-1 and closed her side.

6. The points that arise for consideration are as follows:

1. Whether the appellant has shown good cause for condoning the delay of 91 days in preferring this appeal?
2. What order?

7. The above points are answered as follows:-

Point No.1 - In the Affirmative;

Point No.2 - As per final order,
for the following;

R E A S O N S

8. **Point No.1:-** This appeal is preferred assailing the findings of the trial court in OS No.592/2019, dated 01.08.2022, which was partly decreed in favour of plaintiff. Under this application, it is sought to condone the delay of 91 days in preferring this appeal and in support of her contentions, the appellant got herself examined as PW-1 and produced medical certificate under Ex.P-1. On perusal of medical certificate, it go to show that the petitioner was suffering from chronic back-eke and she was advised to take complete bed-rest for about six weeks. In the cross-

examination, nothing worthwhile is elicited by the respondents No.1 and 2 to disbelieve the oral and documentary evidence led by the appellant.

9. At this stage, it is just to refer a citation reported in **AIR 2009 SC 2577 between State of Karnataka V/s Mohiddin Kuni (Dead by L.Rs) and others**, wherein, the Hon'ble Supreme Court of India while appreciating Section 5 of the Limitation Act was pleased to hold as follows;

“ The expression sufficient cause as defined under Section 5 of the Limitation Act must receive liberal constructions to advance substantial justice”.

10. If the explanation offered by the appellant in the annexed affidavit for the delay of 91 days is taken into consideration, it has to be held that the appellant has shown sufficient cause for not preferring this appeal in time. The application under Section 5 of the Limitation Act needs to be liberally construed in order to advance the cause of justice. The delay caused may be compensated in terms of money and in order to adjudicate the controversy between the parties on merits, it is found essential to condone the delay by allowing this

application by awarding costs. **Accordingly, the point under consideration is answered in the Affirmative.**

11. **Point No.2**:- In view of findings on the foregoing point, the following:

ORDER

I.A. No.1 filed by the appellant under Section 5 of the Limitation Act is allowed on cost of Rs.500/-.

The delay in preferring this appeal is condoned.

(Dictated to the Stenographer on computer, corrected, initialed and then pronounced by me in open Court on this the 5th day of August, 2024)

Sd/-

(IRFAN)
Senior Civil Judge,
Kadur.