

**IN THE COURT OF THE SENIOR CIVIL JUDGE AND  
J.M.F.C AT N.R.PURA, ITINERATE AT KOPPA**

Present: Sri.Raghunatha Gowda K.T., *B.Com. LL.B.*,  
Senior Civil Judge & J.M.F.C., Narasimharajapura, Itinerate at Koppa

**Dated this the 16<sup>th</sup> day of August, 2025**

**FR.RA No.16/2025**  
**(In O.S No.31/2021)**

**BETWEEN:**

Smt. Savithri N. Rao,  
W/o. K.G. Nagesh Rao,  
Aged about 68 years,  
R/o. Balaga, Belagola Village,  
Narve Post, Koppa Taluk,  
Present R/o. Vinobha Nagara,  
2<sup>nd</sup> Cross, 1<sup>st</sup> Stage,  
Shivamogga City,  
represented by her GPA holder.

...Appellant

**V/s.**

Sri. Vijendra,  
S/o. Thamme Gowda,  
Aged about 47 years,  
R/o. Balaga, Belagola Village,  
Narve Post, Koppa Taluk.

...Respondents

**IA.NO.I**

**BETWEEN:**

Sri. Nagesh Rao

...Appellant

V/s.

Sri. Vijendra

...Opponent/Respondent

**ORDERS ON I.A.NO.I**

Learned counsel for the appellant has filed the present I.A. No.I under Section 5 of Limitation Act to condone the delay of 239 days in preferring the appeal.

2. I.A. No.I is supported with the affidavit of G.P.A.holder of appellant stating that he has filed this appeal against the judgment and decree passed in O.S. No.31/2021 by the trial court dated 27/04/2024. further he contended that after the judgment passed he sustained heart attack and operated and take 6 months rest, so that reason he could not file the appeal in time. The delay of 239 days in filing of appeal is a bonafide and not intentional one. If the delay is not condoned then great hardship will be caused to him. Otherwise if delay is condoned no hardship will caused to the other side. Hence, prayed to allow the application.

3. In response to notice, respondent appeared through his counsel and filed objection. In the objection statement he contended that application filed by the appellant is not maintainable either in law or facts. Further he contended that appellant has not produce any document to show that for his illness and there is no sufficient reason to condone the delay. Hence he prays to reject the said application.

4. Further the delay in filing the appeal is 239 days, enquiry conducted and the appellant examined as PW1 and 7 documents were marked as Ex.P 1 to P7. Respondent not adduce any evidence.

5. Heard the arguments on both side, perused the papers, the points that arise for consideration are as hereunder:

### **POINTS**

1. Whether the appellant has made out sufficient grounds to condone the delay of 239 days in preferring the appeal?
2. What order?

6. The findings on the above points are as hereunder:

Point No.1: **In the affirmative.**

Point No.2: As per the final order  
for the following:

### **REASONS**

7. **Point No.1:** This is the appeal preferred by the appellant under Order 41 Rule 1 R/w Section 96 of CPC and the appellant has challenged the judgment and decree passed by learned Civil Judge, Koppa in O.S. No.31/2021 dated 27/04/2024. The appellant herein is plaintiff before the trial court and the respondent is defendant before the trial court. The plaintiff has filed the suit in O.S. No.31/2021 against the defendant for the relief of

permanent injunction. The said suit after contest came to be dismissed on 27/04/2024.

8. On 27/01/2025 the appellant has preferred this appeal and along with the appeal memo he has maintained I.A. No.I under Section 5 of Limitation Act. It is an admitted fact that, there is delay of 239 days in preferring the appeal. The application is supported with the affidavit of the appellant wherein he contended that due heart attack , he taken 6 months rest, so that reason he could not file the appeal in time.

9. Admittedly, the judgment and decree passed by the learned trial court on 27/04/2024, the appellant submits that there is a delay of 239 days in filing the appeal. Further in order to condone the delay to prefer the appeal the appellant himself examined as PW-1 and he has retireate the contents of application in his evidence affidavit and 7 documents were marked as Ex. P1 to 7. Ex. P1, 5 and 6 are the motorized copy of discharge summary. Ex. P2 to 4 and 7 are the motorized copy of lab report. The learned counsel for respondent cross examine the said witness, during his cross examination he admitted that before expiry of appeal period he is not admitted in the hospital. However as per Ex. P1, 5 and 6 documents establish that appellant has taken treatment for cardiology and due to that reason he could not file the appeal in time.

10. It is the settled principles of law that an application under Section 5 of Limitation Act shall be considered liberally. In this regard this court would like to rely upon a citation reported in:

**AIR 2014 SC 1612**

**Between: Brijesh Kumar and others Vs State of Haryana and others**

*The courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bonafides of an inaction or negligence would deprive a party of protection of Section 5 of the Limitation Act. Sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. This court has time and again held that when mandatory provision is not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.*

11. Hence, if the delay is not condoned and if the appellant not permitted to prefer an appeal, hardship will be caused to the appellant. Hence, the delay may be compensated by imposing costs on her. Accordingly, **point No.1 is answered in the affirmative.**

12. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

**ORDER**

I.A. No.I filed by the appellant under Section 5 of Limitation Act is hereby allowed with costs of Rs.1000/-.

Consequently, the delay of 239 days in preferring this appeal is hereby condoned.

Office is directed to call for records from the trial court returnable by: 29.08.2025.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 16<sup>th</sup> day of August, 2025.)

Sd/-

**(RAGHUNATHA GOWDA K.T.)**  
Senior Civil Judge and J.M.F.C.,  
N.R.Pura. Itinerate at Koppa.