

KACM510000392025



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT N.R.PURA, ITINERATE AT KOPPA**

**Present: Sri Raghunatha Gowda K.T., B.Com., L.L.B,
Senior Civil Judge & JMFC., N.R.Pura, Itinerate at Koppa**

Dated this the 17th day of January, 2026

RA No.17/2025

BETWEEN:

Sri Dinesh @ Rama Dinesh Ramappa.

...Appellant

V/s.

AND:

Sri Sadashiva and others.

...Respondents

IA.NO.III

BETWEEN:

Sri Dinesh @ Rama Dinesh Ramappa.

...Applicant/Appellant

V/s.

AND:

Sri Sadashiva and others.

...Opponents/Respondents

ORDERS ON I.A. NO.III

Learned counsel for the appellant has filed the present IA No.III under Section 5 of Limitation Act to condone the delay of 15 days in preferring the appeal.



2. I.A. No.III is supported with the affidavit of General Power OF Attorney of appellant stating that she has challenged the order in F.D.P.No. 1/2015 dated 28.11.2024 passed by Civil Judge and J.M.F.C, At Koppa and She filed this appeal on 03/02/2025. Further she contended that she applied the certified copy on 02/12/2024 and obtained the same on 03/12/2024, since the courts were closed for Christmas vacationed and reopened on 04/01.2025. further she contended that her counsel has noticed that no certified copy of decree which she sought to be challenged, thereafter on verification of courts records and furnish stamp paper to the court on 16/12/2024 and final decree was signed on 07/01/2025 and thereafter she applied the copy of the order of decree afresh on 23/01/2025 and obtained the same on 23/01/2025. so that reason she was unable to prefer an appeal before this court in time there is 15 days delay in filing this appeal for a very much genuine reason. Not filing this appeal in time is not intentional one but bonafide reason. If the present IA is allowed no harm would be caused to other side, on the other hand if not allowed Appellant would be put great hardship and injustice. Hence, prayed to allow the application.



3. in response to notice, respondent No-1 and 7 are filed objection to said application and remaining respondents are not filed objection to said application.

4. The respondent No-1 has filed objection to the application, contending that the application filed by the appellant is not maintainable under law or on facts. The appellant not explained proper reason for delay in preferring appeal within time. Hence he prays to reject the said application.

5. The respondent No-7 has filed objection to the application, contending that he has no objection to those applications and those applications are heard along with merits.

6. After filed objections to I.A.No.III this court posted the case for Inquiry on I.A. No.III. The G.P.A. Holder of Appellant got examined herself as PW.1, filed his chief-affidavit and no documents were marked. During the course of cross examination of PW-1 one document conformed same was marked as Ex.D-1.

7. Heard the arguments on both side, appellant counsel filed notes of arguments with decisions.



8. On careful perusal of the records, the following point that arise for consideration are as hereunder:

POINTS

1. Whether the appellant has made out sufficient grounds to condone the delay of 15 in preferring the appeal?
 2. What order ?
9. My answer to above points are as hereunder:

Point No.1: In the affirmative

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

REASONS

10. **Point No.1:** This is the appeal preferred by the appellant Order 41 Rule 1 R/w Section 96 of C.P.C and the appellant has challenged the order passed by learned Civil Judge and J.M.F.C, Koppa in F.D.P.No.1/2015 dated 28/11/2024. The appellant herein is defendant No-1(e)/Respondent No-1(e) before the trial court and the respondent No-1 herein is the petitioner and other respondents are the defendants before the trial court. The petitioner has filed F.D.P.No.1/2015 against the defendants/respondents for demarcate the share in the suit properties and came to be allowed on 28/11/2024.



11. On 03/02/2025 the appellant has preferred this appeal and along with the appeal memo he has maintained I.A. No.III under Section 5 of Limitation Act. It is an admitted fact that, there is delay of 15 days in preferring the appeal. The application is supported with the affidavit of GPA holder of appellant and chief affidavit of the appellant wherein he has stated that due to vacation and obtained certified copies there was delay in preferring the appeal.

12. Admittedly, the order has been passed on 28/11/2024. Admittedly, the appeal has been preferred on 03/02/2025. Hence the reasons mentioned in the affidavit are bonafide and not intentional one. Further respondent counsel cross examine the PW-1 with regard to the execution of power of attorney and signature of the agent on the said documents. Admittedly the executant of power of attorney is not disputed the execution of the documents. Further as per order XII of C.P.C. the aggrieved person can challenge the order by filing appeal and in order to prove the execution of Power of Attorney the appellant produce the xerox copy of passport of appellant before the court.

13. Further appellant counsel argued that delay application can be considered in liberal manner and right of parties to be



consider while adjudicate the condonation of delay application. In support of his arguments he relied on the decision reported in

1). AIR 2002 S.C. 1201 in between Ram Nath Sao @ Ram Nath Sahu and others v/s Gobardhan Sao and others.

2. Civil Mis. Petition No.94/2022 in between Babu Ram v/s Khajan Singh (High court of Himachal Pradesh at Shimla)

3. Criminal Appeal No.5398/2022 in between Radheyshyam v/s State of U.P.(High Court of Allahabad).

4. Civil Appeal No.8435-8436/2024 in between Mool Chandra v/s Union of India and others (S.C).

5. 2025 Live LAW(S.C) 339 in between Inder Singh v/s The State of Madhya Pradesh.

I have gone through above said judgments the Honble apex court as well High courts held that liberal approach in condoning delay and that justice on merits is to be preferred as against what scuttles a decision on merits. Hence the ratio laid down in those judgments are applicable to the facts and circumstances of this case.

14. 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.

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

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



ORDER

IA No.III filed by the appellant under Section 5 of Limitation Act is hereby allowed with costs of Rs.500/-.

Consequently, the delay of 15 days in preferring this appeal is hereby condoned.

Call for TCR.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 17th day of January, 2026)

Sd/-

(Raghunatha Gowda K.T.)

Senior Civil Judge and J.M.F.C.,
N.R.Pura, Itinerate at Koppa.