

KACM510001512025



**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 27th day of September, 2025

M.A. No.7/2025

BETWEEN:

D.R.Gopalakrishna@ D.R.Gopla

...Appellant

V/s.

AND:

K.Srinivas and others

...Respondents

IA.NO.I

BETWEEN:

D.R.Gopalakrishna@ D.R.Gopla,

...Applicant/Appellant

V/s.

AND:

K.Srinivas and others

...Respondents/Opponents



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 36 days in preferring the appeal.

2. I.A No.I is supported with the affidavit of appellant stating that he well conversant with the facts of the case. Further he contended that he is suffering from hernia and was undergone surgery and I was advised to take bed rest. Further there is delay of 36 days. And in view of the above said reason, the delay in preferring the appeal is caused. The delay caused in preferring the appeal is for the above said bonafide reason and not intentional one. He has good grounds to challenge the validity and correctness of order of trial court. If delay is not condoned he will be put to great hardship. On the other hand if this application is allowed there is no hardship will be caused to the other side. Hence prays to allow the application.

3. In response to the notice the respondents are appear through their counsel, but they did not file objection to said application.

4. Since, there was delay of only about 36 days this court has recorded the evidence and heard the



arguments from both side on the basis of the affidavit filed in support of the application and perused the case papers. After hearing the arguments and on perusal of the case 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 36 days in preferring the appeal?

2. What order ?

5. 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

6. **Point No.1:** This is the appeal preferred by the appellant Order 43 Rule 1 of C.P.C and the appellant has challenged the order passed by learned Civil Judge, Koppa in O.S.No.15/2023 dated 15.04.2025. The appellant herein is plaintiff before the trial court and the respondent herein is the defendant before the trial court. The plaintiff has



filed the suit in O.S. No.15/2023 against the defendants for the relief of declaration and permanent injunction. Further plaintiff filed I.A.No.I U/O, 39 Rule 1 and 2 of C.P.C. and said application after contest came to be dismissed on 15.04.2025.

7. On 30.06.2025 the appellant 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 36 days in preferring the appeal. The application is supported with the affidavit of the appellant wherein he stated that due ill-health, he could not file the appeal well in time there was delay of 36 days in preferring the appeal. Hence the reasons mentioned in the affidavit are bonafide and not intentional one.

8. 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.

9. 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 him. Accordingly, **point No.1 is answered in the affirmative.**

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

ORDER

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



Consequently, the delay of 36 days in preferring this appeal is hereby condoned.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 27th day of September, 2025)

Sd/-
(Raghunatha Gowda K.T.)
Senior Civil Judge and JMFC.,
N.R.Pura, Itinerate at Koppa.