

Order on IA-2 and IA-3

The applicant filed I.A.No.2 u/O XLI Rule 3A
read with Section 151 of CPC and S.5 of Limitation Act

praying to condone the delay of 15 days in filing the above appeal.

The applicant has filed I.A.No.3 under Order XLI Rule 5 and Section 151 of CPC praying to stay the operation and execution of Final Decree for Partition dated 06-08-2024 in FDP No.3/2016 on the file of Senior Civil Judge at Bantwala, Dakshina Kannada pending hearing and disposal of main appeal.

In the affidavit, the applicant stated that he has filed the above appeal as against the impugned Final Decree for Partition dated 06-08-2024 passed by the trial court in FDP No.3/2016. The impugned order under challenge is passed on 06-08-2024, the certified copy for the same is applied on 07-08-2024 and obtained on 30-08-2024. Within 30 days from 30-08-2024, the present appeal ought to have been filed. He was under the impression that the present appeal ought to have been submitted before the Hon'ble High Court of Karnataka, Bengaluru, he had handed over the papers to the counsel of the Hon'ble High Court of Karnataka through his counsel, who appeared in FDP No.3/2016 on behalf of him. In the 4th week of September 2024, he learnt that the present appeal needs to be filed before the Court. He received the entire papers sent to the counsel in Bengaluru on 10-10-2024, thereafter he met his counsel, to instruct him to file the present appeal before the Court.

Thereafter filed the present appeal before the Court. The delay in preferring the present appeal is neither intentional nor deliberate and is due to bonafide reasons.

Further in I.A.No.III, stated that, under the guise of order under challenge, respondent No.1 is contemplating to take forcible possession of the property. He has a fair chance of success in the present appeal, he has made out a case to seek an order of stay. If the relief as sought in the present application is not granted, the very purpose of filing the appeal will be rendered infructuous. Hence, prays to allow I.As.

The learned counsel for the Respondents has filed the objections in both IAs stating that, the application is not maintainable under law and facts of the case. No grounds are made out to allow the application. The final decree passed in FDP No.3/2016 is valid and justified and instead of repetition of final order passed in the said FDP may be read as part and parcel of this objection. The allegations that the present appeal ought to have been submitted to the Hon'ble High Court of Karnataka at Bengaluru and accordingly, Appellant handed over the papers to the counsel of Hon'ble High Court of Karnataka through his counsel, who appeared for Appellant in FDP No.3/2016 and in the 4th week of September 2024 he

learnt that, the present appeal needs to be filed before this Court and he received the entire papers on 10-10-2024, thereafter instructed his advocate to file the present appeal before the Court. Immediately his counsel presented the appeal before this Court is denied. He further denied that, the delay in preferring the present appeal is neither intentional nor deliberate and due to aforesaid bonafide reasons, the impugned final decree for partition dated 06-08-2024 passed by the trial court is unsustainable in the eyes of law.

Further denied that, the Respondent No.1 is contemplating to take forcible possession of the property and the Appellant has been advised that he has a fair chance of success in the present appeal and he has made out a case to seek an order of stay and if the stay is not granted the very purpose of filing the appeal will become infructuous and if the application is not allowed great injustice will be caused to the Appellant. Hence prays to dismiss both IAs.

Heard.

It is settled law, while considering delay application, court has to adopt justice oriented approach than mere technical approach for substantive justice. Delay has been satisfactorily explained.

Further, in the authority relied by the learned counsel for the Appellant :

1. 2025 Supreme (SC) 151 in case of the Chief Engineer PWD Roads Assam – Vs - Pradip Kukmar Das and others- in this case, Hon'ble Apex Court emphasised a justice oriented approach in condoning delays in filing appeals, rejecting hyper-technicality in favour of substantive justice.

Further, observed, High court should have adopted a more liberal & justice oriented approach rather than a hyper- technical one in considering application for condonation of delay.

2. 2023 Supreme (sC) 634 in case of Delhi Development Authority – Vs – Jagan Singh and others- observed, liberal and justice oriented approach needs to be adopted in matters of condonation of delay so that substantive rights of parties are not defeated only on the ground of delay. Power U/Sec. 5 of Limitation Act, must be exercised in a very meaningful manner which will serve ends of justice.

3. 2023 Supreme (SC) 1022 in case of Sheo Raj Singh (Deceased) Through LRS and Others – Vs – Union of India and another- observed, condonation of delay being a discretionary power available to courts, exercise of discretion must necessarily depend upon sufficiency of cases shown and degree of acceptability of explanation, length of delay being immaterial. When

substantial justice and technical considerations are pitted against one another, former would prevail.

Courts must distinguish between an 'explanation' and an 'excuse'. An explanation is designed to give someone of all facts and lay out the cause for something. It helps to clarify the circumstances of a particular event and allows the person to point out that something that has happened is not his fault, if it is really not his fault.

An excuse is often offered by a person to deny responsibility and consequences when under attack. It is a sort of defensive action. Would imply that explanation proffered is believed not to be true.

4. 2010(2) KCCR 1114 in case of Sri. Lakshmana – Vs- Sri. M. Manju- observed, Sec.5 of Limitation Act should be given liberal approach. Sufficient cause is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice.

Refusing to condone the delay can result in meritorious matter being thrown out at the very threshold and cause of justice being defeated. Everyday delay must be explained does not mean a pedantic approach should be made. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence or on account of

malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

For the above discussion and In the interest of justice, I proceed to pass the following

ORDER

IA No.II filed u/O.XLI Rule 3A read with 151 of CPC and Sec.5 of Limitation Act is allowed.

As to IA No.3, it is submitted under the guise of order under challenge, respondent No.1 is contemplating to take forcible possession of the property and he has fair chance of success in the present appeal. If the relief as sought in the present application is not granted, the very purpose of filing the appeal will be rendered infructuous.

Having perused the impugned order and the grounds urged by the appellant, there are sufficient material to consider the appeal on merits. Meanwhile the operation of the order needs to be stayed. Hence, I proceed to pass the following

ORDER

IA No.III filed under Order 41 Rule 5 read with Section 151 of CPC., is hereby partly allowed.

Order dated 06-08-2024 in FDP No.3/2016 on the file of Senior Civil Judge at Bantwala, Dakshina Kannada is hereby stayed .

Interim stay shall be in force till next date of hearing.

Call for TCR by 05-11-2025.

III ADJ, Mangaluru.