

ORDERS ON I.A. No.I

The counsel for petitioner has filed an I.A. No.I under Sec.5 of Limitation Act seeking an order to condoning delay in filing the present petition.

2. *The respondent has not filed objections to the said application.*

3. *Heard arguments.*

4. *The following point is arises for disposal off the application.*

“Whether the petitioner made out sufficient cause to condone the delay in filing the present petition as per I.A. No.I?”

5. *My finding to the above point is does not survive for consideration in this stage for forgoing;*

REASONS

6. *In the affidavit in support of the present application it is stated that, he has filed this petition for setting aside the ex-parte decree and*

for permitting him to defend the said original proceedings, on the grounds mentioned in the petition. It is further submitted that, the respondent had filed a false, frivolous and vexatious suit against him in Small Cause No.29/2023 before this Court inter alia falsely and baselessly contending recovery of money of Rs.18,850/- and likewise making false allegations, filed the said suit. It is further submitted that, the suit has been filed on 20.03.2023 and an order for issue of summons through Spl. Process Server was passed on 22.08.2023 and returnable by 26.09.2023. But he has not received the suit summons as there are already conflicts between him and the defendant and further he unfortunately could not contacted his counsel to appear and nor informed to file Vakalatnama as he was suffering from back pain and as well as joint pain and even he was under medical treatment. Hence, he has not appeared before the Court on 26.09.2023 and because of under medical treatment, he was no aware of the proceeding.

It is further submitted that not only this, the Respondent, who realized that, if he appeared before the Court on later stage will disclose the truth of the mater and anyhow opted to get him placed exparte. The respondent has filed the said

suit and in a very systematic way, succeeded in convincing the Court that the summons was refused by him, but in fact no smell of the said suit was being given to him and he was not at all aware about the next date of the suit and much less the contentions and the pleadings in the said suit. It is further submitted that Court is pleased to place him -Original Defendant ex-parte and further pleased to pass the decree behind the back, without his knowledge, Even after passing of the said decree, the respondent succeeded in hiding the fact of passing of the decree, and subsequently also he was not aware about the said decree. After placing him as ex-parte the plaintiff in the said suit have succeeded to obtain judgment and decree on 06.10.2023 which was on very next dates of hearing. The defendant is an illiterate person and working as Goundi and not aware of Court proceedings. But when some persons came to his house to execute the arrest warrant, then only he immediately started to collect information about the suit and he came to know about the passing of the decree and immediately on the said day a request has been made to the learned advocate to obtain the certified copies of the judgment and decree, depositions and exhibits. The learned advocate has applied for the same on 27.10.2025 and

same were ready on 27.10.2025 he received the same on 27.10.2025 and thus he obtained the records, then came to know that he had been placed *ex-parte* in the suit. Thus the judgment and decree passed in the said suit is one sided proceedings and no opportunity of being heard given to him. The defendant totally unaware about the suit till recently. The defendant would have suitably contested and the said suit would have dismissed with heavy cost, had if he was given opportunity of hearing and contesting the said suit. Hence, days delay for filing this Petition. Hence, this application being filed for condoning the delay, which may kindly be considered and allowed and the delay may kindly be condoned. That, if the delay in filing the petition is not condoned, then, his right will be jeopardized and will be put to untold loss, hardship and inconvenience and it could not be compensated in any manner. On the contrary, no harm or prejudice will be caused to the other side. Hence, prayed to allow the application.

7. On perusal of the same it is noticed to the Court that the above petition is filed by the petitioner seeking to set aside the judgment and decree passed in S.C. No.29/2023 by this Court dated:06.10.2023. The counsel for petitioner filed the present application along with the petition

seeking condonation of delay in filing the petition, on perusal of the petition the date of judgment and decree in S.C. No.29/2023 is 06.10.2023 and the present petition has been filed before this Court on 22.11.2025, nearly more than two years delay is caused in filing the present petition.

8. On careful perusal of the entire materials available on the card, it is noticed that The petitioner filed the present application under Section 5 of Limitation Act for condonation of delay and in the main restoration petition, particularly when the ground is urged in both, the applications are one and the same and interconnected with each other. When the petitioner has taken identical grounds, namely non-awareness of the proceedings, illiteracy, and knowledge of the decree, only at the stage of execution arrest warrant, the question whether sufficient cause exists for condonation of delay is closely linked with the merits of the restoration petition itself.

Therefore, in order to avoid multiplicity of proceedings and to effectively adjudicate the real controversy between the parties, Both applications may be heard together. However, the petitioner is still required to establish sufficient cause for the inordinate delay by placing acceptable material before the court. mere repetition of the same

grounds in both petition is not sufficient. The court has to assess whether summons in the original proceedings were unserved, whether the plea of lack of knowledge is bonafide, Whether the delay is intentional or deliberate? Whether any prejudice would be caused to the opposite party? And whether substantial justice requires an opportunity to contest the matter on merits? If the court finds that the explanation appears probable and bonafide, a liberal approach may be adopted while considering the delay of petition, particularly where refusal to condone delay would foreclose adjudication on merits.

On the other hand, if the records disclose proper service and intentional negligence, both the delay application and restoration petition are liable to be dismissed. Hence, this Court is of the opinion that it is proper to consider the delay application along with the restoration petition on merits, as both arise out of the same set of facts and circumstances. Hence, matter is adjourned for evidence on merits.

sd/-

*(Smt. Sarvamangala K.M.)
I Addl. Senior Civil Judge and JMFC.,
Hubballi.*