

i.	Provision under which the applications are filed	Under Order XLVII Rule 1 of CPC and Section 5 of Limitation Act
ii	Relief sought for	Review and Condonation of delay
iii	The date on which the applications are filed	30.03.2024
iv	Number of the applications	VI and VII
v	The date on which the order objections are filed by different opponents	02.04.2024
vi	The date on which the order were passed on the said applications	15.04.2024

COMMON ORDERS ON I.A No.VI and VII

These I.A.'s No. VI and VII have been filed by the plaintiff U/o XLVII Rule 1 of CPC and Section 5 of Limitation Act to review the order dated 24.02.2023 and condone the delay of 382 days in filing the IAs.

2. In the affidavit it is stated that, the defendant No.1 and others have executed unregistered release deed dated 23.03.2011. The relief sought in the plaint is relied on the above document. During the evidence of plaintiff the document was produced for marking. On 24.02.2023 this court has rejected for marking of the unregistered release deed in plaintiff evidence. As per the judgment in WP No.100576/2022. The unregistered

document can be marked in evidence. The delay in following IA's is not intentional one the IAs are very much necessary for proper adjudication of the case. Hence prays to allow the IA's.

3. The defendant counsel has filed objection to the IA's are stating that IA's are not maintainable either in law or facts. That the reasons mentioned in the application are baseless, the plaintiffs could have preferred an appeal if they have any grievances, but filed application to review that too after lapse of 382 days only to harass the defendant. There are no genuine reasons given for the delay caused. Viewed from any angle this application is not maintainable and same is liable to be rejected. Hence prays to reject the IA's.

4. Heard both side counsel.

5. The following point arise for my consideration they are as follow;

1. Whether the I.As deserved to be allowed?
2. What order ?

6. My answer to the above points are;

Point No.1 : In the Negative

Point No.2 : As per order.

REASONS

7. **Point No 1 :-** This suit has been filed by the plaintiffs for the relief of specific performance of contract against the defendants. The present IA's have been filed by the plaintiff counsel seeking to review the order dated 24.02.2023. It is stated that the defendant No.1 and others have executed unregistered release deed dated 23.03.2011 in favour of husband plaintiff No.1 by name deceased T. Nagaraju. The relief sought in the plaint is relied on the above document. During the evidence of plaintiff the document was produced for marking. On 24.02.2023 this court has rejected for marking of the unregistered release deed in plaintiff evidence. On perusal of the order dated 24.02.2023. This court has rejected to marking the unregistered release deed on ground of non registration of release deed. The plaintiff has not stated any reason that the previous order there is some mistake or error of apparent on the face of record. Further on perusal of the order sheet after rejection of marking of the document the plaintiff closed his chief examination and on 01.07.2023 PW1 was fully cross-examined. Later on 03.08.2023 the plaintiff further evidence was closed and posted for defendant evidence. On 08.01.2024. after conclusion of both evidence the case was posted for argument. After given 7 adjournments the plaintiff has filed this

application and there is delay of 382 days. There is no reason assigned by the plaintiff in filing the application belatedly. With respect to condonation of delay the Honb'le Supreme Court of India has set out principles

CIVIL APPEAL NO. 5867 OF 2015
SHEO RAJ SINGH (DECEASED)
THROUGH LRS. & ORS. ...APPELLANT(S)
VERSUS
UNION OF INDIA & ANR. ...RESPONDENT(S)

35. According to Mr. Sharma, University of Delhi (supra) is a decision by a larger Bench and, therefore, binding on us. This Court, while deciding University of Delhi (supra), was seized of a situation where even if the delay were to be condoned, it would cause grave prejudice to the respondent Delhi Metro Rail Corporation at the instance of the casual approach of the appellant University. This Court, on the argument of nonavailability of the Vice Chancellor for granting approval to file the appeal, and other reasons put forth in the matter, could not conclude that there was fulfilment of sufficient cause for condonation of delay; hence, the refusal to condone the delay. The decision really turns on the facts before this Court because of the prejudice factor involved.

36. We can also profitably refer to Koting Lamkang (supra), cited by Mr. Sen, where the same Bench of three Hon'ble Judges of this Court which decided University of Delhi (supra) was of the view that the impersonal nature of the State's functioning should be given due regard, while ensuring that individual defaults are not nit-picked at the cost of collective interest. The relevant paragraphs read as follows:
"7. But while concluding as above, it was necessary for the Court to also be conscious of the bureaucratic delay and the slow pace in reaching a government

decision and the routine way of deciding whether the State should prefer an appeal against a judgment adverse to it. Even while observing that the law of limitation would harshly affect the party, the Court felt that the delay in the appeal filed by the State, should not be condoned.

8. Regard should be had in similar such circumstances to the impersonal nature of the Government's functioning where individual officers may fail to act responsibly. This in turn, would result in injustice to the institutional interest of the State. If the appeal filed by the State are lost for individual default, those who are at fault, will not usually be individually affected."

37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

CONCLUSION

38. For the foregoing reasons and the special circumstances obtaining here that the impugned order reasonably condones the delay caused in presenting the appeal by the first respondent before the High Court, the present appeal is, accordingly, dismissed. Pending applications, if any, also stand disposed of.

8. The counsel for the plaintiff relied on the judgment of Hon'ble High Court of Karnataka in WP No.100576/2022. Wherein the Hon'ble Court at Para No.12 as clearly stated that the document can be marked in evidence however the admissibility there-off is to be decided subsequently. At Para No.15 of the judgment the released deed would be relied for the purpose of possession and not established the title and the same would be collateral. But in the present case the plaintiff is seeking the main relief of specific performance on the basis of unregistered release deed dated 23.03.2011 which is not permissible. The judgment relied by the plaintiff counsel is not applicable to the present case fact and circumstance of the this case. The delay in filing application cannot be condone. On the other hand prejudice would cause if the IA's are allowed. Accordingly I answer Point No. 1 in the Negative.

9. **Point No.2:-** For the above said reasons the following:

ORDER

These I.A.'s No. VI to VII filed by the plaintiff counsel U/o XLVII Rule 1 of CPC and Section 5 of Limitation Act are hereby dismissed.

For arguments
Call on 30.05.2024.

Addl. C.J and J.M.F.C.,
Arasikere.