

KAHS600009542019



**IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
& J.M.F.C., CHANNARAYAPATNA**

PRESENT: H.K.NAVEEN

L.L.B., L.L.M.,

**PRINCIPAL SENIOR CIVIL JUDGE
CHANNARAYAPATNA**

DATED ON THIS 6th DAY OF AUGUST 2026

R.A.No.105/2019

Appellant/s : Smt.Deepa B.N and another

V/s

Respondent/s : Sri.Nanjegowda and others

Parties to IA

Applicant/s

Appellants : Smt.Deepa B.N and another

V/s

Opponent/s

Respondent/s : Sri.Nanjegowda and others

ORDER

The appellant has filed an IA under Sec.5 of Limitation Act to condone the delay in filing appeal.

2) In support of the IA, the applicant has filed an affidavit. In the affidavit it is stated that he has filed the suit against the defendants for partition and separate possession in OS.No.358/2008 filed on the 1st Additional Civil Judge, Channarayapatna. The suit was dismissed on 13.07.2015. The fact of judgment and decree was not known to the petitioner and his advocate has not informed to petitioner. Therefore, he has not obtained the copy of the judgment and filed the affidavit in time. About two months back the petitioner came to know the judgment and decree and contact another Advocate and obtained the copies and filed the appeal. If the application is not allowed the applicant will be put to greater hardship and prejudice. Therefore, it is prayed to allow the application to condone the delay of 1490 days in filing the appeal.

3) The respondent No.4 and 5 have filed separate objection. The respondent No.4 in his objection stated that the applicant has very well know about the pendency of the suit and proceedings. The applicant has not stated any bonafide and sufficient reasons to condone the delay in filing the appeal. The contention and averments of the affidavit is false. The applicant has created false reasons for filing an appeal. The appellant has filed an application in order to create problem to the respondent. By these reasons it is prayed to dismiss the application.

4) In the objection the respondent No.5 states that the applicant has not given any proper reasons for delay in filing

the petition of 1490 days. From 2008 the applicant has actually participated in the suit and he has known the every stage of the case. The allegation against the Advocate is not a reasons to allow the application. The reasons mentioned in the affidavit is not tenable and it is prayed to dismiss the application.

5) Heard both side. Perused the records in detail.

6) Now the point arise for due consideration;

1) Whether the applicant has made out sufficient grounds to condone the delay in filing the appeal ?

7) My findings to the above Point is in the **Negative** for the following reasons;-

REASONS

8) **Point No.1:-** Originally the plaintiff has filed the suit against the defendants for partition and separate possession. The said suit was dismissed on 13.07.2015. In the suit the plaintiff herself examined as PW.1 and produced some documents. On merits the court has dismissed the suit. After judgment and decree the unsuccessful plaintiff has not preferred an appeal within the period of limitation. Admittedly the appellant has filed appeal along with the application on 06.11.2019. In the application it is specifically stated 1490 days was delayed. In the affidavit there is no specific reasons stated for delay in filing the appeal. She is only stated that the Advocate for the plaintiff has not informed about the

judgment and decree. She has not stated anything about any health reason.

9) In support of the petitioner contention the petitioner has produced 6 documents which are marked as Ex.P.1 to Ex.P.6. The Ex.P.1 is certificate issued by the Doctor dated 31.08.2019 and other hospital records of Punya Hospital which clearly shows that she is only outpatient. Ex.P.4 is discharge cum ID card issued by the Hassan Institute of Medical Science's, as per the said record the applicant was admitted on 10.07.2016 and discharged on 14.07.2016 and another discharge summary issued by the Grasslife Hospital disclose that the petitioner was admitted on 21.11.2021 and discharged on 22.11.2021. All these records disclose that she was only suffering from Asthama and only short duration she was taken treatment. These documents are not sufficient to show that she was continuously suffering from ill-health from the date of judgment till filing the appeal.

10) Advocate for the appellant has relied upon the following judgments;

i) **(1998) 7 SCC 123 in the case of N.Balakrishnan V/s M.Krishnamurthy** wherein the Hon'ble Supreme Court held as under;

A.Limitation Act, 1963 – S.5 – Condonation of delay – Discretion of court – How to exercise – Guidelines stated – Words “sufficient cause” should be construed liberally – Acceptability of explanation for the delay is the sole criterion, length of delay not relevant – In absence of anything showing mala fide or deliberate delay as a dilatory tactic, court should normally

condone the delay – However, while doing so court should also keep in mind the consequent litigation expenses to be incurred by the opposite party and should compensate him accordingly – Where a court condones delay in positive exercise of discretion, superior court and more particularly the revisional court should not normally disturb the same – But where request for condonation of delay is refused, it would be open to the superior court to come to its own finding on the basis of explanation for the delay given by the party – Delay on the part of defendant – appellant of 883 days in approaching the court against dismissal of his application to set aside exparte decree passed against him – Non-action on the part of his advocate explained as cause for the delay – Appellant also complaining about conduct of the advocate before Consumer Forum and getting Rs.50,000 as compensation – Appellant’s explanation for the delay accepted and delay condoned by trial court – But in revision High Court setting aside the order of trial court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time – Held, High Court in revision erred in interfering with the exercise of jurisdiction by trial court in condoning the delay when appellant’s conduct did not as a whole warrant castigating him as an irresponsible litigant having regard to present busy and preoccupied life.

ii) (1987) 2 SCC 107 in the case of Collector, Land Acquisition, Anantnag and another V/s Katiji and others wherein the Hon'ble Supreme Court held as under;

Limitation Act, 1963 – Section 5 – Applicability – Existence of ‘sufficient cause’ – Determination of – Courts should

adopt a liberal and justice-oriented approach – No discrimination should be made merely because State seeking condonation of delay – Delay of only four days on the part of the State in filing appeal against enhancement of amount of compensation for acquisition of land for public purpose to the extent of Rs 14 lakhs by making upward revision of 800%, held, condonable under Section 5 – High Court erred in dismissing the appeal on hyper technical ground of bar of limitation – Land Acquisition Act, 1894, Section 23 (para 3)

Limitation Act, 1963 – Section 5 – State seeking condonation of delay – Must be accorded same treatment as a private party (para 3)

iii) (1981) 2 SCC 788 in the case of Rafiq and another V/s Munshilal and another wherein the Hon'ble Supreme Court held as under;

Practice and Procedure – Contesting parties should not suffer for lapses on the part of their counsel – Exparte order of dismissal of appeal passed by High Court on non-appearance of appellant's counsel on the date of hearing – Application made by counsel for recalling the order and for permission to participate in the hearing of the appeal rejected on ground of unexplained delay in presenting the application to the court – Held, rejection of the application not justified as the party should not suffer for the inaction, deliberate omission, or misdemeanour of his agent, the lawyer – Costs ordered to be recovered from the counsel who absented.

iv) (2019) 17 SCC 108 in the case of Indusind Media and Communications Limited V/s Commissioner of

Customs, New Delhi wherein the Hon'ble Supreme Court held as under;

A. Customs Act, 1962 – Ss. 14, 15, 18 and 156 – Value of imported goods – Determination of – Any amount paid after importation cannot be considered in determination of assessable value – Amount payable as a condition of import vis-a-vis amount payable in respect of matters governing post-importation activities – Distinction between, clarified – Technical know-how fee in respect of post-importation activities, held, cannot be added to value of imported goods- Pre-embedded software for functioning of imported units, held, does not relate to a post-importation activity and hence is includible in assessable value – Non-declaration of amount paid on pre-embedded software – Tantamounts to misdeclaration – Re-determination of value by Department to include value of the pre-embedded software, held, unjustified

v) (2019) 6 SCC 387 in the case of Bhivchandra Shankar More V/s Balu Gangaram More

11) The Advocate for the respondent vehemently argued that the plaintiff/applicant has not made out any sufficient grounds to condone the delay and application may be rejected. In support of his arguments he has relied upon the following judgments;

i) (2021) 18 SCC 384 in the case of Majji Sannemma @ Sanyasirao V/s Reddy Sridevi and others wherein the Hon'ble Supreme Court held as under;

**Limitation Act, 1963 – Sec.5 –
Condonation of delay - Sufficient cause -**

Exercise of discretion by court – Huge delay of 1011 days in preferring second appeal.

ii) 2024 (1) KCCR 364 in the case of R.Raju V/s Rangaswamy and others wherein the Hon'ble High Court of Karnataka held as under;

LIMITATION ACT, 1963 – Section 5 – Delay of 670 days in preferring appeal – Condonation of – No material to show that appellant had no knowledge that judgment and decree in his favour came to be reversed by First Appellate Court – In absence of convincing explanation such inordinate delay declined to be condoned.

iii) 2024 (2) KCCR 1539 in the case of Chennappa V/s Adamma and others wherein the Hon'ble High Court of Karnataka held as under;

LIMITATION ACT, 1963 – Section 5 – Each days delay to be explained – Non-explanation – Whether the delay could be condoned – No.

12) The principles of the above cases are respectfully admitted. In this case the applicant has not shown any suitable and reasonable grounds to show the sufficient reasons to condone the delay. The applicant has not shown any good reason in his affidavit. In contrary to the affidavit the petitioner has produced some medical documents and that medical documents also only for limited period. The applicant has not properly explained the delay in filing the appeal after lapse of abnormal delay. The court can exercise the discretion in case the appeal is preferred after

completion of appeal period within reasonable time. But in this case after lapse of abnormal delay the appellant has preferred this appeal. Therefore, it is not fit case to exercise the discretion to condone the delay. On considering the entire facts and circumstance of the case in principles laid down in the above cases, the court opinion that the applicant has not made out any reasonable and good grounds to condone the delay in filing the appeal. Hence, my answer to **Point No.1 in the Negative**. Hence, I proceed to pass the following;-

ORDER

The application filed by the applicant under Sec.5 of Limitation Act is dismissed.

Consequently Appeal is not maintainable and closed.

(Dictated to the stenographer, transcribed and typed by her, corrected and then pronounced by me in the open court on this 6th day of August 2026)

(H.K.NAVEEN)

Prl. Senior Civil Judge and JMFC
Channarayapatna