

ORDER ON IA NO. 1

The IA No.1 has been filed by the appellants U/sec. 5 of Limitation Act seeking order to condone the delay of 90 days caused in preferring the present appeal.

2. In support of IA No.1, an affidavit of appellant No.2 is annexed, wherein it has been contended that as appellants are being old aged persons were suffering from illness such as

typhoid etc., and therefore they could not file the present appeal within the time prescribed under the law, and ultimately prayed to condone the said delay to meet the ends of justice.

3. The respondent has filed objections opposing the IA No.1, wherein it has been contended that the appellants have not produced any medical documents to show that they were suffering from illness and due to said illness they could not file the present appeal. It is further contended that the appellants have not explained the delay properly and therefore the delay caused in preferring appeal can not be condoned. Hence, ultimately prayed to reject the IA No.1.

4. I have heard the arguments on IA No.1 and perused the case file.

5. Now the points that would arise for my consideration are as follows;

1. Whether the appellants prove that they had sufficient cause for not preferring the appeal within the period and they have made out grounds for condoning the delay caused in preferring the present appeal?

2. What order?

6. My findings to the above points are as follows;

Point No.1 : In the affirmative.

Point No.2: As per the final order,
for the following reasons;

REASONS

7. **POINT NO.1:-** The perusal of the record reveals that the present appeal has been preferred challenging the judgment and decree passed by the learned Civil Judge and JMFC, Byadgi in OS No. 64 of 2012 dated 20-03-2019. It further reveals that the present appeal has been filed against the dismissal of the suit.

8. In the present IA No.1, the delay of 90 days is sought to be condoned on the ground that the appellants are old aged persons and they were suffering from illness and due to such reason they could not file the appeal within the time prescribed by the law.

9. On the other hand, it is objection by the respondent that the appellants have not produced any medical documents to show that they were suffering from illness and due to such illness, appeal could not be filed within the time, and therefore the appellants are not entitled for condonation of delay caused in preferring the appeal.

10. The appellants have stated by way of affidavit that they were suffering from illness. The appellants are aged about more than 62 and 64 years respectively. There is no reason to disbelieve the contention stated by the appellants by way of affidavit. Since the appellants being senior citizens, they might have fallen ill. Hence, contention of the appellants that they were suffering from illness can not be brushed away. Hence, under the facts and circumstances of the case, it appears that the appellants were suffering from illness and therefore due to such reason they could not file the present appeal within the time prescribed under the law. Hence, I am of the opinion that the appellants have satisfied the court that they had sufficient cause for not preferring the appeal within such period. I further hold that the appellants have made out grounds for condoning the delay of 90 days caused in preferring the present appeal. **Hence, I have answered point No.1 in the affirmative.**

11. POINT NO. 2 :- For the reasons assigned on point No. 1, and findings given thereon, I proceed to pass the following.

ORDER

The IA No.1 filed by the appellants U/sec. 5 of Limitation Act seeking condonation of delay

of 90 days caused in preferring the present appeal is hereby condoned.

In the result, the appeal is ordered to be heard on merits.

Office to call for the trial court records.

For arguments on main appeal.

Call on 23-11-2020.

sd/-
Sr. CJ. & JMFC.,
Byadgi.