



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND
J.M.F.C., AT SHIGGAON SITTING AT SAVANUR**

Present: Sri. Sunil S. Talawar
B.A.LLB..., (Spl.)
Senior Civil Judge & J.M.F.C.,
Shiggaon.

DATED THIS THE 04th DAY OF JANUARY 2025

R.A.No.1/2021

Appellant/s: Smt.Reshmabanu W/o Khajamodin
Dukandar and Others.

Vs.

Respondent/s: Noorahmmed S/o
Abdulrehmansab Momin And
others

I.A.No.I/2021

Applicant/s: Smt.Reshmabanu W/o
Khajamodin Dukandar and
Others.

Vs.

Opponent/s: Noorahmmed S/o
Abdulrehmansab Momin And
others



ORDERS ON I.A.No.1

This is an application filed by the appellants / applicants under Sec.5 of Limitation Act seeking order for condonation of delay in filing of this appeal for fair trial and effective adjudication of the real dispute between the parties.

2. The applicant No.11 / appellant No.11 has sworn to the affidavit and stated that they have filed present appeal against the judgment and decree passed in O.S.No.36/2002 on the file of Civil judge Savanur dated 18.12.2003. It is also stated by the appellant No.11 that they have applied for the certified copy on 01.01.2014 and which was delivered by court on 02.01.2014. It is also stated by the appellant No.11 that they had been to Goa for their livelihood and in the year 2014 they came to know this fact when the notice of FDP No.6/2013 served upon them. It is also stated that several members died in their family during that period and they were shocked by the uncertain events in the joint family. Therefore, they could not come to their village places and came on last week of November 2020 then they approached their lawyer and had given instruction to file this appeal. The appellants have also



stated that there is no mistake on part of them and they are got fair chance of success in appeal. Therefore, prayed to condone delay of 16 years and to hear matter on merits.

3. Per contra, the respondents appeared through their counsel and filed objections to the IA. It is contended by the respondents that the reasons shown in IA affidavit are all false baseless unreasonable and malafide one. The original suit No.36/2002 came to be decreed on 18.12.2003 and the application for condonation of delay is filed on 23.12.2020 which amounting to 17 years 6 days delay from the date of said decree. The same delay is beyond acceptable limits. It is also contended that the decree passed in O.S.No.36/2002 reached finality by way of FDP No.6/2013 which was allowed on 22.10.2018. Hence, prayed to reject the application with cost.

4. The inquiry was held and the appellant No.11 has stepped into witness box and examined as PW.1.

5. Heard Sri S.S.Hiretanad, advocate for appellants and so also heard Sri.Sadik.Kanavi., advocate for respondent No.1.



6. Perused the materials of this case.

7. The points that arose for the consideration of this court are as here under:-

1. Whether the appellants have made out grounds that they had sufficient cause for not preferring the appeal within limitation and there are sufficient grounds made out as to condonation of delay of more than 16 years?

2. What order?

8. My answer to the above said points are as here under:-

Point No.1: In the Affirmative

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

REASONS

9. Point No.1 :- The appellants have filed present application seeking order of this court for condonation of delay of more than 16 years in preferring this appeal. The appellants in order to satisfy this court, have filed their affidavit and shown their own cause in

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preferring the appeal beyond the period of limitation. In this regard as to substantiate the contents of their affidavit the appellant NO.11 has stepped into witness box and examined as PW.1. The PW.1 has filed his affidavit in lieu of examination in chief by reiterating entire statement of fact mentioned in affidavit. The main contention of appellants in seeking condonation of delay in filing the appeal are, they have applied for the certified copy on 01.01.2014 and which was delivered on 02.01.2014. It is also stated by the appellant No.11 that they had been to Goa for their livelihood and in the year 2014 they came to know this fact when the notice of FDP No.6/2013 served upon them. It is also stated that several members died in their family during that period and they were shocked by the uncertain events in the joint family. Therefore, they could not come to their village places and came on last week of November 2020 then they approached their lawyer and had given instruction to file this appeal. The appellants have also stated that there is no mistake on part of them and they are got fair chance of success in appeal. Therefore, prayed to condone delay of 16 years and to hear matter on merits.



10. The respondents have filed counter to the application of appellant and have extensively cross examined the PW.1. It is suggested to the PW.1 that since 2003 to 2014 he was resided at Karadagi village. The PW.1 has admitted the same but voluntarily stated that they use to go Madapur, Goa,Vijaypur and Bangalore for their livelihood in all these period. The PW.1 has also stated that once in a 15 days or in a month they use to visit Karadagi village. It is also admitted by the PW.1 that his father, mother his 3 brothers and a sister in law died at Karadagi village and they all attended funeral function of the same.

11. No doubt that there is a delay of more than 16 years in preferring this appeal. The appellants have filed present appeal by challenging the judgment and decree passed in O.S.No.36/2002 dated 18.12.2003. It is also not disputed by the appellants that the present respondents as to draw up final decree in terms of preliminary decree passed in O.S.No.36/2002 dated 18.12.2003 have filed FDP No.6/2013 which also came to be allowed and matter reached to its finality. The present appellants have also preferred appeal against the order passed in FDP NO.6/2013 which is also pending before



this court bearing R.A No.6/2022. Upon perusal of the materials of this appeal the judgment passed in O.S.No.36/2002 dated 18.12.2003 is an exparte decree against present appellants.

12. The learned advocate for appellants would argue the matter that in order to decide real dispute between the parties it is require to condone the delay in filing the appeal. The learned advocate for appellants has relied upon decision report in 2007 (3) KCCR 1957, the state of Karnataka and others V/S H.B.Munivenkatappa and others, 2017 SAR (Civil) 1003, K.Subbaredayadu and others V/S The special Deputy Collector, (1998) 3 Civil Law Journal 318, Ravi Namdev Kavale and another V/S Kittaswami and others, (2012) 4 SCALE 155 S. Ganesharaju V/S Narasamma, AIR 2009 SC 1927 State of Jarkhand And Others V/S Ashok Kumar Chokhani and others, (2001) 4 Kar. LJ 39 Sangramappa V/S Shankarappa , 1999 AIHC 387, Lagama V/S The land tribunal Chikodi (1998) 1 CTC 500 Ramu Ravalu Gavade V/S Sataba Gavadu Gavade and another and AIR 2019 SC 3225, Robin Thapa V/S Rohit Dora and argued the matter that unless the respondents are able to show malafides in not approaching the court within the period



of limitation, generally as a normal rule delay should be condoned. The rules of limitation are not meant to destroy or foreclose of right of parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly.

13. On the other hand learned advocate for respondent NO.1 would argue the matter that there is absolutely no sufficient cause shown by the appellants as to condone the delay. The learned advocate for respondent No.1 would argue the matter by placing reliance on decision of Hon'ble Apex Court in AIR 2010 SC 3043, Balawant Singh V/S Jagadish Shing and others, Civil Appeal in Ajay Dubra Vs. Pyare Ram and others and would argue the matter that liberal approach does not mean doing injustice to opposite party the grounds when raised for condonation not sufficient and also unbelievable the delay cannot be condoned. Further learned advocate for respondent No.1 has also relied upon decision of our own High Court in regular second appeal No.627/2020 between Chikkananjayya Vs. Dhanlaxmamma decided on 23.09.2022 and decision of Madras High Court report in Aironline 2019 MAD 1560, M.V.Gopal V/S N. Rajappan and would argue the matter that negligence on part of appellant cannot be held a



sufficient cause for delay of condonation. Further, delay of more than 16 years in filing appeal by stating that they had been out of station for their livelihood and all other various problems can not be acceptable for a simple reasons admitted in the cross examination, Hence, petitioner has not made out a ground to condone delay of more than 16 years. The learned advocate for respondent No.1 would also argue matter based on the factual circumstances of this matter as the playing of fraud by advocate is not a sufficient ground to condone the delay.

14. I have gone through the materials placed by the both counsel and also carefully gone through the decision placed by the both counsel. The law in relation to condonation of delay made out by the Hon'ble Apex court is very clear that the petitioner in order to seek condonation of delay need to explain reason for it. Meaning their by every day delay reasons should be explained. Upon going through the materials of this matter the appellants are seeking condonation of delay which is more than 16 years. Our own High Court in a case report in **2007 (3) KCCR 1957 the State of Karnataka and Others Vs. H.B.Munivenkatamma and Others** Honourable Justice N.Kumar held that the judiciary is respected not on account of its power to



regularize in justice on technical grounds but because it is capable of removing injustice and is expected to do so. Refusing to condone the delay can result in a meritorious matter being thrown out, at the very threshold and cause of injustice being defeated. As against this, when delay is condoned the highest that can happen is that a case would be decided on merits after hearing the parties.

15. Keeping in mind of the law declared by our own High Court and with due respect to the decision cited by learned advocate for respondent, I would like to discuss the present matter on hand and I do find that the appellants wanted to place certain aspects in relation to disputed order passed in O.S No.36/2002 dated 18.12.2003. Therefore, there is no need to touch the grounds for appeal and the prayer in respect of to set aside the order passed in O.S No. 36/2002, there is a reasonable cause shown by the appellants in preferring present appeal. Therefore, it is require to hear the parties in the appeal on merits. In order not to restrict the natural justice that litigation should not be terminated by default either on the act of plaintiff or defendant but adjudication must be done on merits and hence, an opportunity deserves need to be given to the appellants



to contest the Appeal which is subject to condition to pay cost for delay of condonation.

Therefore, for the above said reasons and discussions point No.1 is answered in the **Affirmative**.

16. Point No.2:- In view of the above discussion, I proceed to pass the following:

O R D E R

The application filed by the appellants /applicants Under Sec.5 of Limitation Act 1963 is hereby allowed on cost of Rs.15,000/-.

Resultantly, delay of more than 16 years in filing this appeal is hereby condoned subject to the purpose of present appeal being heard on merits.

(Directly dictated to Stenographer on Computer, corrected by me then taken print out from computer and pronounced by me in the Open-Court this the 4th day of January 2025).

(SUNIL S. TALAWAR)
Senior Civil Judge & J.M.F.C.,
Shiggaon.

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