

KAKB210000842021



**IN THE COURT OF SENIOR CIVIL JUDGE AT ALAND,
KALABURAGI DISTRICT.**

:PRESENT:

SRI. S.M. ARUTAGI
B.com. LLB., (Spl)
SENIOR CIVIL JUDGE, ALAND.

R.A.No.12/2021

DATED THIS THE 14th DAY OF OCTOBER 2022

Appellants: Bhouramma W/o Amruth Wadagaon
& another by their SPA holder,

V/s

Respondents: Chandurao S/o Revappa Bedge
& another,

PARTIES TO I.A.NO.II

**Applicants/
Appellants** Bhouramma W/o Amruth Wadagaon,
R/o Salagaon, Tq. Aland



& another through their SPA
Amruth S/o Madappa Wadagaon,
R/o Salageoan, Tq. Aland.

(By Sri. A.W.A., Advocate)

Vs.

**Opponent/
Respondents** Chandurao S/o Revappa Bedge,
Age: 70, Occ: Agriculture,
R/o Salegaon, Tq. Aland & another.

(By Sri. B.A. Deshpande, Advocate)

**ORDER ON IA NO.II FILED U/O., 41 Rule 3(A) R/w
Section 5 of Limitation Act, FOR CONDONATION
OF DELAY.**

This is an application filed by the SPA holder of appellants U/O., 41 Rule 3(A) R/w Section 5 of Limitation Act, to condone the delay of 25 days for filing this appeal by allowing the application in the interest of justice and equity.

2. In the affidavit annexed to the application, it is stated that he was SPA holder of the appellants



and he know the facts of the case and he was senior citizen and due to corona, he was fear of attack by corona disease and therefore, he was not moving freely in the open public place and therefore, he was staying indoor and he could not contact his advocate. Recently, his advocate approached to him to file an appeal and due to the said reason of spread of corona disease and fear of life there is a delay of 25 days in filing this appeal and he was prevented by the said cause in preferring this appeal. The petitioner has good grounds for appeal being allowed. The delay in filing this appeal is bonafide one and if an application is allowed, no hardship or loss cause to the other side. Hence, on these grounds, sought for allow the application.

3. On the other hand, the counsel for respondents files objections to the application



contending that the appellants have not shown any sufficient reasons for filing this appeal and application. The appellants have not produced any SPA executed by the appellants and even, the judgment of the Trial Court has been passed on 17-02-2021 and copy application was filed on 23-02-2021 and copies have been secured on 23-04-2021, but the appellants did not approach before this court. The appellants are aware of the judgment and decree passed by the Trial Court in OS No.03.2009 and in OS No.247/2008 dated 17-02-2021. Even, they have not preferred an appeal well within the time. The applicants have not explained each day delay and after lapse of so many days, the appellants have preferred this appeal without showing sufficient reasons. The appellants have not produced any documents before this court and also not vigilant about the court proceedings and



they have filed this application without their being and valued and good reasons and nothing is prevented to the appellants for filing this appeal through SPA holder well within the time. As such, the question of condoning the delay in this appeal is does not arise. Hence, prayed for dismissal of application with costs.

4. On the basis of application and objection, the following points arise for my consideration:-

1) Whether the SPA holder of appellants has made out sufficient grounds to condone the delay of 25 days in filing this appeal?

2) What order?

5. In support of the case of the appellants, the SPA holder himself examined as PW-1 and closed his side evidence.



6. On the other hand, the counsel for respondents submits no evidence on behalf of respondents.

7. Heard the arguments on both side and perused the case records.

8. My answers to the above points are as follows:-

Point No.1 : In the affirmative.

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

REASONS

9. **Point No.1:-** Admittedly, this appeal has been filed by the appellants against the judgment and decree dated 17-02-2021 passed in OS No.03/2009 and OS No.247/2008 on the file of Addl. Civil Judge & JMFC, Aland, wherein the trial Court decreed the suit in OS No.03/2009 filed by the respondents and the suit in OS No.247/2008 filed by the appellants is dismissed.



10. On perusal of the same, it is crystal clear that the suit filed by the plaintiff in OS No.03/2009 is decreed and OS No.247/2008 came to be dismissed and copy of the judgment obtained on 24-03-2021. The present appeal has been filed by the appellants on 15-04-2021. The reasons assigned by the appellants for delay in filing this appeal is that the applicant is SPA holder and due to Pandemic Covid-19, the government has issued guidelines and enforced the lock down and for that reason, he has not come outside and he was staying indoor and he could not contact his counsel and his counsel recently contacted him and directed him to file the appeal against the judgment and decree passed by the Trial Court. Due to the reason of spread of corona disease, he was fear of life and there is a delay in filing this appeal for 25 days and same are bonafide one.



11. During the course of cross-examination of PW-1, he denied the suggestion made by the counsel for the respondent except admitting that he has personally conducted the case before the Trial Court and he does not know the exact date of judgment of Trial Court and due to corona disease, he has not contacted his counsel and he has clearly deposed that about 20-25 days are delay in filing this appeal and rest of the suggestion made by the counsel for the respondents is denied.

12. At this juncture, it is beneficial to refer the decision reported in **(1998) 7 Supreme Court Cases 123 in case of N.Balakrishnan v/s M.Krishnamurthy**. In this decision, at Para 9 their lordships have held that:-

“It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be



exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court”.

At Para 11 their lordships have also held that:-

“Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to



dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts”.

At Para 12 their lordships have held that:-

“A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate”.



13. As per the above said decision, itself very clear that even though the very long delay can be condoned if the explanation is satisfied. I am of the opinion that, if this application itself is rejected, it amounts to denial of valuable right of the appellants to defend their case in this appeal. In my opinion, the appeal can be disposed on merits. Considering the nature of suit and facts and circumstances of the case, I am of the opinion that by imposing reasonable costs on the appellants, if delay is condoned, it would meet ends of justice. In order to prevent miscarriage of justice, it is just and necessary to condone the delay in filing this appeal. Hence, I come to conclusion that the appellants have made out good grounds to condone the delay in filing this appeal. Accordingly, I answer point No.1 in affirmative.



14. **Point No.2:-** For the reasons discussed above, I proceed to pass the following:-

:O R D E R:---

IA.No.1I filed by the SPA holder of appellants U/O., 41 Rule 3(A) R/w Section 5 of Limitation Act, is hereby allowed on costs of Rs.1,000/-.

Delay in filing this appeal is hereby condoned subject to payment of costs.

For arguments on main appeal,
call on:

(Dictated to the Stenographer, transcribed by her, then corrected by me and pronounced in the open court on this the **14th day of October, 2022**)

(S.M. ARUTAGI)
Senior Civil Judge,
Aland.