

KAKB210002102023



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

:PRESENT:

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

CIVIL MISC.9/2023

DATED THIS THE 02nd DAY OF MAY - 2025

Petitioner/s: Sugalabai W/o. Someshwar Chowdeshwari.

V/s

Respondent/s: Urmila W/o. Kailash Jidge.

PARTIES TO I.A.NO.I

**Applicant/
Petitioner** Sugalabai W/o. Someshwar Chowdeshwari,
Aged: 75 years, Occ: Agriculture,
R/o. Hiroli village, Taluka Aland
District Kalaburagi.

(By Sri. D.S. Nadkar, Advocate)

Vs.



**Opponent/
Respondent** Urmila W/o. Kailash Jidge,
Aged: 45 years, Occ: Agriculture
& Household, R/o. Sarsamba,
Taluka Aland, District Kalaburagi.

(By Sri. B.S. Nimbargi, Advocate)

**ORDER ON IA NO.I FILED U/SEC., 5 OF THE
LIMITATION ACT FOR CONDONATION OF DELAY.**

This is an application filed by the petitioner U/Sec., 5 of Limitation Act, for condonation of delay in filing this petition by allowing the application in the interest of justice and equity.

2. In the affidavit annexed to the application it is stated that the respondent has filed the suit for specific performance of contract against her with respect to the suit schedule property and she appeared through her counsel in the said suit and due to old age and she was suffering from paralysis disease and also she was



bedridden during the pendency of the said suit and therefore, her written statement has taken as not filed and this court has passed exparte judgment and decree against her in OS No.77/2021 on 10.10.2022. When the notice of Execution Petition No.1/2023 was served to her then she was aware of passing of exparte judgment in the above mentioned suit. Thereafter, immediately appeared in the said execution petition through her counsel and obtained certified copy of Judgment and decree in O.S.No.77/2021 on 02.06.2023. The respondent has falsely filed the suit for specific performance of contract against her, which the suit property is ancestral property and due to ill health, she was prevented to appear and to file her written statement in the earlier suit and her two daughters were also having their shares in the suit property and even in a compromise decree the suit



property was transferred in the names of her daughters. There is a delay in filing of this petition about 8 months 27 days and if the delay is not condoned, she will be put to great and irreparable loss and if the delay is condoned, no loss or hardship will be cause to the respondent. Hence, sought for allow the application.

3. On the other hand, the counsel for the respondent files detailed objections stating that the application is not maintainable in the eye of law. The petitioner has not specifically shown the delay in filing this petition and therefore, petition is not itself maintainable. It is denied that the petitioner was during the pendency of the original suit in O.S.No.77/2021 she was ill health suffering from paralysis decease. On the other hand the petitioner was hale and healthy and she was appeared through her counsel and she did not



chosen to file her written statement in spite of giving sufficient adjournments by this court and even in the original suit this court has issued injunction order against the defendant from alienating the suit property. But, in spite of knowledge of order of this court, the petitioner colluding with her daughters compromised the suit in O.S.No.65/2022 on the file of Principal Civil Judge and JMFC Aland. Therefore, the decree passed in the above suit is not binding upon the respondent. The petitioner has no right to allot the share to her daughters because, she was already alienated the property in favour of respondent. Moreover, the daughters of petitioners were also signed on agreement dated 28.04.2014 executed by mother Sugalabai in favour of the respondent as consent witnesses which are marked at Ex.P4 and Ex.P5. Hence, the petitioner and her



daughters have knowledge of sale transaction with the respondent since the beginning. So, when the said fact aware of the petitioner and her daughters, then they have no right to file the said suit in O.S.No.65/2022 on the file of Principal Civil Judge and JMFC Aland. Moreover, this court has given sufficient adjournments to contest the suit, in spite of that the petitioner was not vigilant in the court proceedings and she was aware of the passing of Judgment and Decree and even the petitioner has not explained each delay in filing this application. The petitioner has not properly shown the delay in filing of this petition. If this court allowed the application, then the respondent will be put into great and irreparable loss. Hence, prayed for dismissal of the application with costs.

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



- 1) *Whether the petitioner has made out grounds to condone the delay in filing this petition?*
- 2) *What order?*

5. In support of her contention, the petitioner got herself examined as PW1 by filing an affidavit in lieu of examination-in-chief and closed her side evidence. On the other hand, the SPA holder of respondent got himself examined as RW1 and produced 6 documents marked at Ex.R1 to Ex.R6 and closed their side evidence.

6. Heard the arguments and perused the case records.

7. 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

8. **Point No.1:-** Admittedly, this petition has been filed by the petitioner against the judgment and decree passed in OS No.77/2021 dated 10.10.2022 on the file of this court wherein, this court has passed the Judgment and Decree in favour of the respondent.

9. On perusal of the same, it is crystal clear that this petition is filed by the petitioner on 08.06.2022. The reasons assigned by the petitioner for delay in filing this petition is that when she was appeared through her counsel in the original suit, then she was unable to appear before the court due to old age and even she was suffering from paralysis decease and she was bedridden during the pendency of the suit in O.S.No.77/2021 and therefore, in the above said reasons, she has not filed her



written statement well within the time and therefore, this court had passed exparte judgment against her and hence, she sought for allow the application.

10. During the course of cross-examination of PW1 she admitted about filing of suit in O.S.No.65/2022 on the file of Principal Civil Judge and JMFC Aland by her daughters and also a compromise decree has been passed in the said suit without issuance of notice and denied that she has intentionally and deliberately not filed her written statement in the original suit No.77/2021 and also denied that she was not suffering from any decease like paralysis and rest of the suggestions are totally denied by the PW1. On the other hand, the SPA holder of the respondent has adduced his evidence and reiterated the objection averments. In support of their case, the respondent has produced 6



documents marked at Ex.R1 to Ex.R6. Ex.R1 is the Special Power of Attorney, Ex.R2 is entire order sheet in O.S.No.65/2022 on the file of Principal Civil Judge and JMFC Aland. Ex.R3 is the certified copy of plaint in the said suit. Ex.R4 is the certified copy of the compromise petition in the said suit. Ex.R5 is the certified copy of entire order sheet in O.S.No.77/2021 on the file of this court and Ex.R6 is certified copy of compromise decree in the said suit in O.S.No.65/2022.

11. So, looking to the evidence of RW1 and the document produced by him it is crystal clear that due to ill health of petitioner, she was absent before this court in O.S.No.77/2021 and she has not filed her written statement in spite of giving sufficient opportunity and there is a delay has been caused which is bonafide one. At this juncture, I would like to rely upon a 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”.

12. Another decision *reported in (2024) SCCR 106 in case of Sheo Raj Singh (Deceased) through LRS. And Others versus Union of India and Another.*

In this decision, their lordships have held that:-

*“Land Acquisition Act, 1894 Section 18-
Limitation Act, 1963 Section 5 - Appeal
against Reference Limitation - Delay of around*



479 days in presentation of appeal - Expression 'sufficient cause' in Section 5 must receive a liberal construction - Condonation of delay being a discretionary power available to Courts, exercise of discretion must necessarily depend upon sufficiency of cause shown - When substantial justice and technical considerations are pitted against one another, former would prevail - High Court's decision to condone delay on account of first respondent's inability to present appeal within time, does not suffer from any error - Impediments in working of grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of competing interests - Appeal dismissed.

13. On perusal of the above cited decision, it is very clear that even though very long delay can be condoned, if the explanation is satisfied. When



substantial justice and technical considerations are pitted against one another, former would prevail. I am of the opinion that, if this application itself is rejected, it amounts to denial of valuable right of the petitioner to defend her case in this appeal. In my opinion, the petition can be disposed on merits only not on technical grounds. Hence, considering the nature of the suit and facts and circumstances of the case, I am of the opinion that by imposing reasonable costs on the petitioner, if delay is condoned, it would meets ends of justice. In order to prevent miscarriage of justice, it is just and necessary to condone the delay in filing this petition. Hence, I come to conclusion that the petitioner has made out good grounds to condone the delay in filing this petition. 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.I filed by the
applicant/petitioner U/Sec., 5 of
Limitation Act, is hereby allowed on
costs of Rs.5,000/-.

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

(Dictated to the Stenographer, transcribed by him, then
corrected by me and pronounced in the open court on
this the **02nd** day of May – 2025).

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

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