



**IN THE COURT OF THE III ADDL. DISTRICT JUDGE,
KOLAR (SITTING AT KGF)**

: PRESENT :

Sri. GANAPATI GURUSIDDA BADAMI
III-Addl. District & Session Judge, Kolar
(Sitting at KGF)

Dated this the **21st** day of **October-2024**

R.A. NO.38/2024

APPELLANT/S: **Raghuram Reddy**
(Rep. by: **Sri. M.V.K.** Adv)
- V/s -

RESPONDENT/S: **Smt. Sarasamma & others**
(Rep. R1 by: **Sri. V.V.** Adv.,
R2 & 3 by : **Sri. S.R.J.** Adv.)

IN I.A. NO.I

APPELLANT/S: **Raghuram Reddy**
- V/s -

RESPONDENT/S: **Smt. Sarasamma & others**

**ORDER ON I.A. NO.1 UNDER SECTION.5 OF
LIMITATION ACT**

Appellant has filed this application for condonation of delay of 12 days in preferring the appeal.



2. In the accompanying affidavit of appellant he has stated that, due to ill-health of his wife who under went leg surgery in the month of January-2024 and as he was only person to take care of his wife, he was unable to meet his advocate and give instructions to file this appeal. He has further stated that, he has got good case on merits and if application is not allowed and delay is not condoned, he will be put to loss and hardship which cannot be compensated in terms of money and on the contrary, no kind of loss or hardship will be caused to other side. Therefore, it is prayed to allow the application.

3. Respondent No.1 filed objections to the application and denied the contents of accompanying affidavit and contended that, application is not maintainable either in law or on facts and liable to be dismissed with costs. It is further contended that, the appellant is having malafide intention to harass the respondents without allowing them to get their legitimate share. He has sworn false affidavit stating that, he is only person to look after his wife. He is having three sons and one daughter who are looking after his wife and he is aged about 79 years and there was no necessity to him to take care of his wife. He has not made out any grounds to condone the delay. Therefore, it is prayed to reject the application.



4. In an enquiry on I.A. No.1, the appellant himself examined as PW.1 and got marked Ex.P1 to P31 and closed enquiry.

5. Heard the arguments of Learned Counsel for Appellant and Learned Counsel for Respondents on I.A. No.1 and perused the materials on record.

6. Points arise for my consideration are:

POINTS

1. Whether appellant has made out proper and sufficient grounds for condonation of delay in preferring the appeal?
 2. What order?
7. My findings on the above points are as under:

Point No.1: In the **Affirmative**

Point No.2: As per **Final Order**, for the following:

REASONS

8. **POINT NO.1**: Appellant has preferred this appeal against final order passed in FDP. No.2/2016 by Learned Additional Senior Civil Judge and JMFC, Court KGF, dated: 01.02.2024. The Trial Court has passed an order on 01.02.2024 and appellant applied for certified copy of the



order on 23.01.2024 and copies were ready and delivered on 09.02.2024 and he preferred the appeal on 25.03.2024. It goes to show that, prior to passing an order, he applied for certified copies and he got the certified copies on 09.02.2024. In the accompanying affidavit, he has made out the ground of ill-health of his wife and he has produced discharge summary of Regal Hospital, Bengaluru and as per the said document, his wife admitted in the hospital on 23.01.2024 and she undergone surgery in the hospital on 24.01.2024 and to that effect, he has produced sufficient medical documents which are marked as Ex.P1 to 31. The said documents clearly indicate that, he was engaged in providing treatment to his wife and his wife has been treated in the hospital till 27.01.2024. Even after discharged from the hospital, she has been under medical advise and to that effect, some medical prescriptions are produced before the Court.

9. In the cross-examination, he has stated that, his wife is suffering from diabetic since last three years and since last one year, she has been affected for gangrene. In further cross-examination he has stated that, he admitted his wife in the hospital for 3-4 months. He has produced medical documents to show that, his wife was admitted in the Regal Hospital, Bengaluru. There is no abnormal delay in filing



this appeal. His answers in the cross-examination reveal that, he is having three sons and one daughter and they are residing separately in one house and they are having knowledge about final decree proceedings.

10. Admittedly, there is some delay in preferring the appeal, but it is not abnormal delay and he has produced 31 medical documents about treatment provided to his wife. While considering the application for condonation of delay, if sufficient reasons are given, the Court should adopt liberal approach and there should not be hyper technical approach while considering the application for condonation of delay. The acceptance of reasons is a rule and rejection is an exception. There is no strait jacket formula while considering the application for condonation of delay. The merits of the case cannot be thrown out while considering the application for condonation of delay and by interpreting technically, appeal should not be dismissed. The Hon'ble Supreme Court in various decisions has categorically held that, if sufficient reasons are assigned, the Court should accept them and condone the delay.

11. The expression "sufficient cause" must receive liberal construction so as to advance substantial justice which has been held in the decision reported in **State of Karnataka**



V/s. Y. Moideen Kunhi (Dead) by LRs and others – 2009(5) SCJ 606.

12. In **Majji Somulu @ Swamin Naidu V/s. Majji Nagarajulu @ Nageshan & others – 2015(6) ALT 301** in which it is held that, for condonation of delay, sufficient cause be shown, the Court must not be pendantic in deciding the delay condonation petition and it should not be dismissed on mere ground of long delay if the explanation offered is bonafide.

13. In **Basavaraj and another V/s. Special Land Acquisition Officer – 2013(6) ALT (SC) 43** in which, it is held that, the sufficient cause be given liberal interpretation.

14. In **Ummer V/s. Pottengal Subida and others – 2018(3) ALT (SC) 11** in which it is held that, the cause shown by the appellant for condoning the delay in filing the appeal before Hon'ble High Court was/is a sufficient cause within the meaning of Section.5 of Limitation Act and application for condonation of delay of 544 days was allowed.

15. In **M.S. Naudine Pharma, Rep. By: its Partner and another V /s. M/s. Med. Manor Organics Pvt. Ltd., Rep. By: its Director – 2019(2) ALT 270** in which it is held that, need to explain every days delay is no longer necessary. The



length of delay is not the criteria, but the correctness of reasons are the explanation for the delay is the important factor. As per the settled law on this aspect, the sufficient cause has to be liberally interpreted provided negligence, inaction, lack of bonafides etc., are not made out. The purpose of establishment of courts is to render justice and there is no hard and fast rule for condoning the delay and each case should be decided on its own merits.

16. It is clear from the law laid down in the above referred decisions that, the Court should take liberal, pragmatic, justice oriented, non-pendantic approach while dealing with an application under Section.5 of Limitation Act. The courts are not supposed to legalize injustice, but are obliged to remove injustice. The term “sufficient cause” should be understood in proper spirit, philosophy and purpose regard being had to the fact that, the terms are basically elastic and are to be applied for doing substantial justice which is paramount and pivotal and technical consideration should not be given undue and uncalled for emphasis and there should be liberal approach while applying legal principles.

17. In the light of the principles laid down in the said decisions and also considering the fact that, the merit of the case should not be thrown out from consideration, it is just



and proper to condone the delay by imposing some costs which will meet the ends of justice. So, I answer **Point No.1** in the **Affirmative**.

18. **POINT NO.2**: For the reasons discussed above, I proceed to pass the following:

ORDER

I.A. No.1 under Section.5 of Limitation Act is hereby allowed.

Delay of 12 days in preferring the appeal is hereby condoned subject to payment of cost of Rs.500/- by the appellant to the respondents.

(Dictated to the stenographer through online, corrected and then pronounced by me in the open Court on this **21st day of October-2024**)

(Ganapati Gurusidda Badami)
III-Addl. District & Session Judge,
Kolar (Sitting at KGF)