

ORDERS ON I.A.NO.4.

The above interim application is filed by appellants under section 5 of Limitation Act along with supporting affidavit praying to condone the delay if any in filing the appeal.

2. In the affidavit, the appellant No.2 has deposed that appellant No.1 is the brother and appellant No.3 is sister of the appellant. That respondent No.2 had filed suit in O.S.271/09 for the relief of permanent injunction. The respondent i.e. plaintiff deliberately have not proceeded with the matter. Hence suit was dismissed on 26.6.2012. On the same day it was got restored by the respondent/plaintiff. That the 1st appellant and other appellants i.e. defendant No.1 to 3 were not personally served summons and the defendant No.3 was an employee in BSNL department due to transfer, but affixture was made after defendant No.3 had vacated her house and had been placed exparte in O.S.271/2009. That due to non serving of summons on the defendants, they could not lead evidence on the defendant's side and that defendant's counsel had obtained wrong date of hearing, hence the defendant evidence was not led, but the judgment was pronounced, after one month of judgment, appellants/defendants came to know about judgment. Hence the appellants had obtained certified copy of judgment and decree on 20.1.2015 and had applied for copy of entire order sheet summons served to defendants

on 7.4.2015. Hence there was a delay in filing the appeal, further the appellant No.2 had suffered viral fever from 20.04.2015 to 22.4.2015, to that effect documents are produced.

3) The respondents have filed the objections to the above I.A. denied the entire contention raised by the appellants.

REASONS

4) This is an appeal made with respect to relief of injunction sought before the trial court by the respondent, wherein suit of respondent had been allowed and judgment has been passed. Against the said judgment and decree, the present appeal has been preferred by the present appellants against the respondents. The appellants have given reason that one of the respondent was not served summons properly, that due to appellant advocates for obtaining wrong date could not lead evidence on defendants side and that after pronouncement of judgment the appellants have come to know and had applied certified copy on 3.2.2015 and further has stated that one of appellant was not well due to viral fever. Hence there is a delay in preferring the appeal before the appellate court. Hence have filed the above I.A.

In order to decide the matter on the principle of natural justice and to decide on merits that the appellant should be given an opportunity. There is a delay of 40 days in filing the present appeal. Hence, the delay caused by the appellant can be met with by imposing costs. Hence I proceed to pass the following.

ORDER

I.A.No.4 filed by the appellants under section 5 of Limitation Act is hereby allowed with cost of Rs.1000/-.

Sd/-

(LATHADEVI G.A.)

Senior Civil Judge & JMFC, Malur.