

ORDERS ON IA No.1

This application is filed by the appellant under Order XLI Rule 3-A of CPC read with Section 5 of the Limitation Act to condone the delay of 464 days in filing this present appeal.

2. In the affidavit filed to the Application, it is stated that the present appeal is filed challenging the correctness and legality of the Judgment and Decree dated 04.01.2020 passed by the Learned 3rd Additional Civil Judge and JMFC Maddur in OS No. 159/2019. The appellant was advised to prefer regular appeal. He could not arrange money for court fee and other legal expenses. In the meanwhile, the appellant and his wife suffered from age-related ailments. They were bed-ridden. The entire family was depending on the appellant. The appellant could not instruct his counsel to file appeal. In the meanwhile, in the year 2020 because of lockdown and pandemic COVID-19 the appellant was unable to meet his advocate to give proper instructions to file appeal. The appellant could not file the appeal due to poverty coupled with ill-health. The reasons stated for delay of 464 days excluding the period of COVID-19 are *bona fide* reasons. Therefore, the present application is filed to condone the delay in filing the present appeal.

3. The respondent filed objection to the application and denied the entire averments of the affidavit filed to the above application. It is contented that the judgment and decree passed in OS No. 159 of 2019 was well within the

knowledge of the appellant. The appellant appeared through his counsel in OS No. 159/2019 on 02.06.2019. The court granted sufficient opportunity to file written statement. But, the defendant failed to file written statement. The defendant was negligent and no regards to law. The respondent filed Execution No. 45/2020 for execution of decree passed in his favour. Notice on execution petition is also served on the appellant. The appellant appeared in the execution petition through his counsel. He has not filed any objection to the execution petition. The appellant has knowledge about original suit and execution petition. The reasons stated in the affidavit to file the present appeal are not sufficient. Hence it is prayed to dismiss the application.

4. Heard and perused.

5. The point that arises for my consideration is as follows ;

Whether the appellant has made out sufficient grounds to condone the delay in filing the present appeal?

6. My answer to the above point is in the **Negative** for the following;

REASONS

7. The appellant has stated that there is delay of 464 days excluding the COVID-19 pandemic lockdown period.

The appellant is examined as PW1 in support of IA No. 1. The respondent and her counsel during the argument submitted that there is delay of 1,389 days in filing the appeal. On perusal of materials available on record, it is forthcoming that judgment and decree was passed by the trial Court on 04.01.2020. The present appeal is filed on 18.04.2023. As per the provisions of Article 116(b) of the Limitation Act, the period prescribed for filing appeal to any other court than the High Court is 30 days from the date of decree. The appellant has not stated as to how much period is excluded for COVID-19 pandemic lockdown. Therefore the days of delay mentioned in the application are not in accordance with the provisions of the Limitation Act.

8. In the application as well as in the examination in chief of AW1, it is stated that due to financial constraints, age-related ailments and due to COVID-19 pandemic lockdown, appeal could not be filed in time. On perusal of the appeal, age of the petitioner, appellant mentioned in the affidavit file to the above application it is forthcoming that he is aged 56 years. At the age of 56 years, it cannot be said that the appellant suffered from age related ailments. If the appellant had financial constraints and poverty in preferring this appeal, there are separate provisions under CPC in respect of such situations. The judgment and decree is passed by the trial Court on 04.01.2020. COVID-19 pandemic lockdown was started

from 23.03.2020. Therefore the reasons stated for not filing the appeal within time are not acceptable reasons.

9. The appellant during his cross-examination has admitted that he has knowledge about passing of judgment and decree by the trial Court and he also has knowledge about filing of execution petition by the respondent. On perusal of the cross-examination of the appellant, it is forthcoming that he has knowledge about everything. Therefore, it appears that the present appeal is filed only as obstructive measure to execution petition filed by the respondent. The judgment and decree passed by the trial Court is for specific performance of contract. On perusal of the materials available on record, it is forthcoming that there are no sufficient reasons to condone the delay in filing the present appeal. Accordingly this Court is of the considered view that the delay in filing the present appeal is inordinate delay and there are no sufficient reasons to condone the delay. Hence, the above point is answered in the **Negative**. Accordingly, this court proceeds to pass the following:

ORDER

IA No.1 filed by the appellant under Order No. XLI Rule 3-A Read with Section 5 of the Limitation Act is thereby dismissed.

As a result, the appeal stands dismissed.

(MOHANAKUMARI N.B.)
I-Addl. Senior Civil Judge & JMFC.,
Maddur.