

ORDERS ON IA No.1

This application is filed by the Appellants under order 41 rule 3A of CPC R/W/S 5 of Limitation Act,1963 to condone the delay of 650 days in filing the present appeal.

2. In the affidavit filed to the above application, it is stated that the Appellants filed IA No.1 before the Trial court. The Trial court dismissed IA No.1 without applying its judicial mind. Therefore, the Appellants filed application before the Trial court for withdrawal of the suit on 03.09.2022. The respondents filed objection to the application. The Trial court on merits dismissed the application filed by the Appellants under order 23 rule 1 of CPC on 13.06.2023. Thereafter, the Appellants filed application for amendment of plaint on 12.07.2023. It was also objected by the respondents. The Trial court allowed the application on 27.04.2024 and permitted the

Appellants to amend their plaint. Accordingly, amendment was carried out and amended plaint was produced on 06.06.2024. In view of the above proceedings before the Trial court, there is delay of 650 days in filing this appeal. The delay is not intentional one, but for the above said bonafide reasons. Therefore, the above application is filed for condonation of delay.

3. The respondents filed objection to the present application and denied entire statements made in the affidavit filed to the application as false. The Trial court dismissed IA No.1 filed by the Appellants under order 39 rule 1 and 2 of CPC on 27.07.2022. The defendants have not made any attempt to file appeal within the prescribed time. The Appellants and other persons by colluding each other filed suit on the same subject matter for same relief before the learned Prl. Civil Judge and JMFC, Madduru in OS No.505/2023 and obtained exparte order. The application filed by the Appellants is not with bonafide reasons. The Appellants have not explained sufficient reasons for each and everyday delay in preferring this appeal. In the absence of specific reasons to condone the delay, this application is liable to be rejected. Therefore, it is prayed to dismiss the present application.

4. Heard and perused.

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

Whether the Appellants have made out sufficient grounds to condone the delay in filing the present appeal?

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

REASONS

7. This appeal is preferred against the order passed by the Trial court on IA No.1 filed under order 39 rule 1 and 2 of CPC dated 27.07.2022 in OS No.418/2021. In the affidavit filed to the application, it is stated that there are 650 days in filing the appeal against the order passed by the Trial court. In the affidavit filed to the application, it is stated that IA No.1 filed under order 39 rule 1 and 2 of CPC came to be dismissed on 27.07.2022. Thereafter, the Appellants filed application for withdrawal of suit itself on 03.09.2022. The same is objected by the respondents. The Trial court dismissed application filed by the Appellants for withdrawal of suit on 13.06.2023. Thereafter, the Appellants filed application for amendment of plaint. It was also also objected by the respondents. The Trial court allowed application on 27.04.2024 and permitted the Appellants to amended their plaint as sought for.

Thereafter, the Appellants carried out amendment and furnished amended plaint on 06.06.2024. The present appeal is filed on 19.06.2024.

It is the case of the Appellants that due to the above proceedings before the Trial court for withdrawal of suit and amendment of plaint, there is delay of 650 days in filing this appeal. The Appellants No.2 during his examination before the court as PW1 on IA No.1 reiterated the averments of affidavit filed to the above application on the reasons for delay in filing the appeal. He got marked Ex.P1 to 5 documents. Ex.P1 document is certified copy of plaint filed in OS No.418/2021. Ex.P2 document is certified copy of IA under order 39 rule 1 and 2 of CPC by the Appellants in OS No.418/2021. Ex.P3 document is certified copy of objection filed by the respondents. Ex.P4 document is certified copy of order passed on IA No.1 by the Trial court dated 27.06.2022 dismissing the application filed by the Appellants under order 39 rule 1 and 2 of CPC. Ex.P5 document is certified copy of written statement filed by respondents in OS No.418/2021.

On perusal of the materials available on record and on perusal of the evidence of PW1, it is forthcoming that the delay in filing the present appeal was caused as the Appellants were involved in the proceedings before the Trial court for withdrawal of suit.

Thereafter, on rejection of the application for withdrawal of suit, the Appellants were engaged in filing application for amendment of plaint. The present appeal is filed immediately after furnishing amended plaint. Therefore, the reasons stated for filing the present appeal belatedly are sufficient to condone the delay. Moreover, in order to decide the appeal on merits, it is just and necessary to condone the delay in filing the appeal. Accordingly, above point is answered in the ***Affirmative***. Hence, this court proceeds to pass the following:

ORDER

IA No.1 is filed by the Appellants under order 41 rule 3 (A) of CPC R/W/S 5 of Limitation Act of CPC is hereby allowed on costs of Rs.1000/-.

The delay in filing the present appeal is hereby condoned.

For Appellants arguments.
Call on 29.06.2026

**I-Addl. Senior Civil Judge & JMFC.,
Maddur.**