

ORDER ON IA No.I

The appellant has filed this application Under Section 5 of Limitation Act seeking the condonation of delay of 30 days in preferring the appeal.

2. On the other hand, the respondent has filed objection to the application and contending that, the application filed by the appellant is not maintainable and he has not given sufficient reasons to allow the application. Hence, prays for reject the application.

3. Heard arguments of appellant and respondent's side and perused the materials available on record.

4. The following points that would arise for my consideration is:

1) Whether the appellant has made out proper and sufficient grounds to condone the delay in filing the appeal ?

2) What order ?

5. My findings on the above points are as follows:

Point No.1 : In the Affirmative

**Point No.2 : As per final order
for the following :**

REASONS

6. **Point No.1:-** It appears that the appellant has filed this appeal based on the judgment and decree in O.S.No. 64/2018 dated 14.08.2024. Thereafter this appeal is filed on 28.10.2024. As per Article 116(b) of Limitation Act, the appeal has to be preferred within 30 days from the date of decree. The appellant has to be filed appeal on or before 14.09.2024. But, he did not file appeal within time. Therefore, there is a delay in preferring this appeal about 30 days.

7. Further, it is submitted by the appellant that he was suffering from jaundice and he had taken Ayurvedic treatment. For that reason he could not preferred appeal in time. In view of above reasons taken into consideration and the reasons in the application filed by the appellant are satisfactory to condone the delay.

8. At this stage this court refer to decision in the case of **Laxmappa Pandappa Benakatti V/s. Gangawwa W/o Krishnappa Benakatti** reported in **2009(3) KCCR 1763 (SC)**, it is held that;

“When proper reasons are given, rejection is not proper. The delay of 40 days in filing the appeal was condoned. In this case also there is a delay of about 40 days in preferring this appeal. But the proper reasons are assigned by the appellant”.

9. This court carefully perused the above cited decision and the facts and circumstances of the case is aptly applicable to the present case on hand. The reasons stated in the accompanying affidavit which is enclosed to IA No.I filed by the appellant Under Section 5 of Limitation Act is deserves to be allowed. **Accordingly, point No.1 is answered in the Affirmative.**

10. **Point No.2**:- For the reasons stated above, this court proceed to pass the following:

ORDER

I.A. No.I filed by the Appellant under Section 5 of Limitation Act is allowed on cost of Rs.500/-.

The delay in filing the appeal is condoned.

Call for trial court records by:
14.03.2025.

**Senior Civil Judge & JMFC.,
K.R.Nagar.**