

**IN THE COURT OF THE II ADDL DISTRICT &
SESSIONS JUDGE, MYSURU**

Present: Sri.Hosamani Pundalik,
II Addl. District & Sessions Judge,
Mysuru.

Dated this the 3rd day of November 2022

R.A.No.324/2020

Appellants:

1. M.Gangadhara S/o Madaiah, aged about 58 years, Working as Gate man, R/at EWS 392, CITB, II stage, Kuvempunagar, Mysuru-23.
2. Kaalappa S/o Late Annaiah, aged about 56 years, Working as Office Superintend, R/at D.No.2129, C.H.47/3, II Cross, Ashoka Puram, Mysuru.
3. M.N. Lilly W/o Unni Krishnan, aged about 48 years, R/At No.365, 3rd Cross, 4th Main, Vijayanagar I Stage, Mysuru-570017.
4. S.Parimala W/o Sudardattatry, aged about 45 years, R/at No.108, D Block, 25th Cross, I Stage, J.P.Nagar, Mysuru.
5. Sabanath Bannaiah S/o K.Abraham, aged about 64 years, working as chief Radio Grapher Railway Hospital. R/at D.No.128/B, V.R.C. Yadavagiri, Mysuru.
6. Unni Krishnan S/o G. Sankupallai, aged about 52 years, R/at No.365, 3rd Cross, 4th Main, Vijayanagara I Stage, Mysuru.
7. S.Girish S/o Gondia Rao, aged about 54 years, working as Station in Charge Master R/at No.54, "Gubbigudu" 4th A Man, Karle Habitat , Lingabudi Palya, Mysuru.

8. Rajeevalochana S/o Lakshminarayanappa , aged about 52 years, working as Senior Section Engineer R/at Door No.4/B Railway Colony, Challakari Taluk.
9. Ramachandra Rao S/o S.Subba Rao, aged about 65 years, working As Points Man, M.N.G.T. Goods Yard, S.W.R., Mysuru.
10. S. Atchaiah S/o Sadalu Atchaiah, aged about 65 years, Retired as Passenger Guard, Mysuru, R/at No.1282, 5th Main, 6th Phase, I Stage, Sharadadevi Nagar, Mysuru.
11. V. Subramanian S/o Venkataraman, aged about 70 years, Retired Railway Employee, R/At Skylark Enclave Apartment, Flat No.105, I Floor, 5th Main, Jagadish Nagar, New Tippasandra, Bangalore-75
12. V. Kannayya S/o V.Pentayya, aged about 78 years, Retired Railway Employee I.E Ticket Inspector, presently R/at Mugaulla, Rajamundari Taluk, East Godavari District, A.P. Represented by P.A Holder V.Venkataramanna S/o V.Kannayya No.25, Siddaganga colony, Gadag Road, Hubli.

(By Sri.H.V.Sreenath Adv.)

Respondents:

- 1.M/s South Western Railway Employees, House Building Society Mysuru, repto. by its President.
- 2.M/s South Western Railway Employees, House Building Society Mysuru, repto. by its Secretary, South Western Railway Housing Society Mysuru North (R), Railway office, Irwin Road, Mysuru -01.
3. D.Venkatesh, Major R/at I Main, Kumbhar Koppal, Mysuru.

4. Smt. Jayamma W/o chaluvegowda, aged about 80 years. R/at No.26, Marigudi Beedi, Kumbar Koppal, Mysuru.
5. Smt.Gowramma W/o Chikkallomma, aged about 70 years, R/at No.217, 6th Cross, Kumbar Koppal, Upper Bus Stop, Mysuru.
- 6.Ningegowda @ Chikkanna S/o Late Sannegowda, aged about 65 years, R/at No.7, I Main, Kumbar Koppal, Mysuru.
- 7.Smt.Sakamma W/o Venkatappa @ Gundappa, aged about 60 years, R/at No.2607, K.G.Koppal, 4th Cross, Opp. Shaneshwara Temple, Mysuru.

All are Lrs of deceased Madamma W/o Late Sannegowda

- 8.Smt.Lakshamma W/o Ningegowda, Major R/at II Cross, Kalidasa Road, V.V.Mohalla, Vontikoppal, Mysuru.
- 9.Suresh Major R/at II Cross, Kalidasa Road, V.V.Mohalla, Vontikoppal, Mysuru.
- 10.Nagesh S/o Late Chaluvegowda, R/at No.56, Marigudi, I Main, Kumbar Koppal, Mysuru.
- 11.Ramesh S/o Late Chaluvegowda, R/at No.56, Marigudi Beedi, I Main, Kumbar Koppal, Mysuru.

Both are Lr's of Late Chaluvegowda.

12. Venugopal S/o L. Srinivasa Naidu, aged about 46 years, R/at No.23, 14th Cross, 4th Main, Vidyaranyapuram, Mysuru.
13. Shyam Sundar S/o Vishwanatha, aged about 35 years, R/at No.1825/28, Behind Court, Kirijaji Road, Hunsur.

(By Sri.M.C.Deleepkumar for R1 and 2
Sri.Srinivas.A for R3 Sri.Lakshmana.J.N for R6

Sri.S.Krishnegowda for R7, Sri.A.S.Nataraj for R12 and 13, Adv. **R4, 5, 8 to 11 exparte)**

I.A.No.I

Applicants:

1. M.Gangadhara S/o Madaiah, aged about 58 years, Working as Gate man, R/at EWS 392, CITB, II stage, Kuvempunagara, Mysuru-23.
2. Kalappa S/o Late Annaiah, aged about 56 years, Working as Office Superintend, R/at No.2129, C.H.47/3, II Cross, Ashoka Puram, Mysuru.
3. M.N. Lilly W/o Unni Krishnan, aged about 48 years, r/At No.365, 3rd Cross, 4th Main, Vijayanagar I Stage, Mysuru-570017.
4. S. Parimala W/o Sudardattatry, aged about 45 years, R/at No.108, D Block, 25th Cross, I Stage, J.P.Nagar, Mysuru.
5. Sabanath Bannaiah S/o K.Abraham, aged about 64 years, working chief Radio Grapher Railway Hospital. R/at No.128/B, V.R.C. Yadavagiri, Mysuru.
6. Unni Krishnan S/o G. Sankupallai, aged about 52 years, R/at No.365, 3rd Cross, 4th Main, Vijayanagar I Stage, Mysuru.
7. S. Girish S/o Gondia Rao, aged about 54 years, working as Station In Charge Master R/at NO.54, "Gubbigudu" 4th A Man, Karle Habitat , Lingabudi Palya, Mysuru.
8. Rajeevalochana S/o Lakshminarayanappa , aged about 52 years, working as Senior Section Engineer R/at Door No. 4/B Railway Colony, Challakari Taluk.

9. Ramachandra Rao S/o S.Subba Rao, aged about 65 years, working As Points Man, M.N.G.T. Goods Yard, S.W.R., Mysuru.
10. S. Atchaiah S/o Sadalu Atchaiah, aged about 65 years, Retired as Passenger Guard, Mysuru, R/at No.1282, 5th Main, 6th Phase, I Stage, Sharadadevi Nagar, Mysuru.
11. V. Subramanian S/o Venkataraman, aged about 70 years, Retired Railway Employee, R/At Skylark Enclave Apartment, Flat No.105, I Floor, 5th Main, Jagadish Nagar, New Tippasandra, Bangalore-75
12. V. Kannayya S/o V.Pentayya, aged about 78 years, Retired Railway Employee I.E Ticket Inspector presently, R/at Mugaula, Rajamundari Taluk, East Godavari District, A.P. Represented by P.A Holder V.Venkataramanna S/o V.Kannayya No.25, Siddaganga colony, Gadag Road, Hubli.

Opponents:

1. M/s South Western Railway Employees House Building Society, Mysuru , reptd. by its President – Residing at South Western Railway Housing Society Mysuru North (R), Railway office, Irwin Road, Mysuru -01
2. M/s South Western Railway Employees House Building Society Mysuru reptd by its Secretary. Residing at South Western Railway Housing Society Mysuru North ®, Railway office, Irwin Road, Mysuru -01
3. D. Venkatesh R/at I Main, Kumbhar Koppal, Mysuru.

4. Jayamma W/o chaluvegowda, aged about 80 years. R/at No.26, Marigudi Beedi, Kumbar Koppal, Mysuru.
5. Gowramma W/o Chikkallomma, aged about 70 years, R/at No.217, 6th Cross, Kumbar Koppal, Upper Bus Stop, Mysuru.
6. Ningegowda @ Chikkanna S/o Late Sannegowda, aged about 65 years, R/at No.7, I Main, Kumbar Koppal, Mysuru.
7. Sakamma W/o Venkatappa @ Gundappa, aged about 60 years, R/at No.2607, K.G.Koppal, 4th Cross, Opp. Shaneshwara Temple, Mysuru.

All are Lrs of deceased Madamma W/o Late Sannegowda

8. Lakshamma W/o Ningegowda, Major R/at II Cross, Kalidasa Road, V.V.Mohalla, Vontikoppal, Mysuru.
9. Suresh Major R/at II Cross, Kalidasa Road, V.V.Mohalla, Vontikoppal, Mysuru.
10. Nagesh S/o Late Chaluvegowda, R/at No.56, Marigudi, I Main, Kumbar Koppal, Mysuru.
11. Ramesh S/o Late Chaluvegowda, R/at No.56, Marigudi Beedi, I Main, Kumbar Koppal, Mysuru.

Both are Lr's of Late Chaluvegowda.

12. Venugopal S/o L. Srinivasa Naidu, aged about 46 years, R/at No.23, 14th Cross, 4th Main, Vidyaranyapuram, Mysuru.
13. Shyam Sundar S/o Vishwanatha, aged about 35 years, R/at No.1825/28, Behind Court, Kirijaji Road, Hunsur.

Order on I.A. U/s 5 of Limitation Act

This is an application filed by the appellants / applicants U/Sec.5 of the Limitation Act for condoning the delay of 13 days in filing the present appeal in the interest of justice.

2. The case of the appellants /applicants in brief are as under:

It is stated in the affidavit along with the application filed by one Girish on his behalf and on behalf of the other Appellants, who are the member of Housing society Further it is stated that Judgment in O.S No.668/2009 was pronounced on 23.06.2020, the copy was applied on 25.06.2020. The copy received on 17.07.2020 the appeal ought to have been filed within 30 days from the date of receipt of the copy of preferring the above appeal, there is delay of 13 days, due to Covid 19, Pandemic, himself and other Appellants were not able to meet the advocate and get prepared the appeal filed in time. As such, there is delay in filing the above appeal he is told by his advocate, further more the appeal being filed, as per S.O.P to the point of Limitation and prayed to allow the application for condoning the delay in filing the Appeal in the interest of justice.

3. Per contra, the respondents have not filed their objection. Hence, the objections taken as not filed.

4. In order to prove their case, Atchaiah himself examined as PW.1 and closed the side. The Respondents have not chosen to adduce any evidence. Hence, the evidence on the side of the Respondents taken as closed.

5. Thereafter, I have heard the arguments advanced by the learned counsel for the Appellants and that of the learned counsel for the Respondents.

6. The points that would arise for my consideration in this case are as under :

1. Whether the applicants / appellants have shown sufficient cause for condoning the delay of 13 days in filing the appeal by allowing the application filed U/Sec. 5 of Limitation Act ?

2. What Order?

7. 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

8. **Point No.1:-** It is pertinent to note that the Appellants have filed the present Appeal along with the application under Section 5 of Limitation Act for condoning the delay of 13 days in filing of the Appeal. It is stated in

the affidavit filed along with I.A. by Appellant No.7 Girish that Judgment in O.S No.668/2009 was pronounced on 23.06.2020, the copy was applied on 25.06.2020. The copy received on 17.07.2020 the appeal ought to have been filed within 30 days from the date of receipt of the copy of preferring the above appeal, there is delay of 13 days, due to Covid 19, Pandemic, himself and other Appellants were not able to meet the advocate and get prepared the appeal filed in time. As such, there is delay in filing the above appeal he is told by his advocate, further more the appeal being filed, as per S.O.P to the point of Limitation and prayed to allow the application for condoning the delay in filing the Appeal in the interest of justice.

9. Per contra, the respondents have not filed their objection. Hence, the objections taken as not filed.

10. For a moment we shall turn our attention to the evidence adduced by the Appellants. Atchaiah himself gave evidence as PW.1 and reiterated the contents of the affidavit filed along with I.A. in his chief examination. PW.1 in his evidence specifically stated that there is a delay of 13 days in filing Appeal due to COVID-19 pandemic and they were not able to meet their advocate in their office and prayed to allow the application . The evidence of PW.1 has gone unchallenged.

11. It is pertinent to note that as per Judgment in **SUO MOTU writ petition No. 3/2020** in Re: cognizance for extension of Limitation the Hon'ble Supreme Court of India as per Judgment dated 10.01.2022, extended period of Limitation from 15.03.2020 till 28.02.2022, and the Hon'ble High Court of Karnataka issued circular No.HCLC No. 59/2020 dated 19.01.2022 for exclusion of period from 15.03.2020 till 28.02.2022 in view of order passed in Hon'ble Supreme Court of India in SUO MOTU writ petition Civil No. 3/2020.

12. It is pertinent to note that the word sufficient cause has to be construed as elastic expression for which no hard and fast guidelines can be prescribed. The court have wide discretion in describing sufficient cause keeping in view of the peculiar facts and circumstances of the each of the case. If the sufficient cause is made out for non-appearance on the date fixed for hearing, the petitioner can not be penalized for his previous negligence for which I placed the reliance on the decision reported in the case of **G.P. Shivastava Vs. P.K. Raizad** reported in **AIR 2000 SC 1221 - 2000(3) SCC 54**) wherein the Hon'ble Supreme Court of India – can not be penalized for his previous negligence. In another decision reported in **2013 SAR (Civil) 154** in case of **The State of Karnataka & Ors. Vs. Vivekananda M. Hallur & Ors.** wherein

the Hon'ble Supreme Court of India - Condoned the delay of 449 days as the application is supported by affidavit. In another decision reported in **2002(2) KCCR P.821** wherein the Hon'ble High Court of Karnataka, held that, regarding condonation of delay, substantial justice and technical considerations when pitted against each other substantial justice to be preferred – Sufficient cause employed in the language of Sec. 5 of the Limitation Act, deserves to be given liberal construction and is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves to be given liberal construction and is adequately elastic to enable the courts to apply the law in a meaningful manner which sub-serves the ends of justice. Another decision reported in **2000 (4) KCCR 2702** in case of **P.Amarnatha Shetty Vs. Vishweshwara Bhat** wherein it was held that – Sufficient Cause for condonation of delay – There is no presumption that delay in approaching the Court is always deliberate. The words "Sufficient Cause" under Section 5 of Limitation Act should receive a liberal construction so as to advance substantial justice. Another decision reported in **2016 (1) Kar.L.J. 457** in case of **Rangappa vs. Nagappa** wherein the Hon'ble High Court of Karnataka held that

the suit filed in respect of immovable property substantial rights of the party should not be deprive in respect of immovable property only on technicality. Another decision reported in **AIR 2001 SC 2417** in case of **M.K. Prasad vs. Arumugam** wherein the Hon'ble Supreme Court of India held that while deciding the application under Section 5 of Limitation Act Court should keep in mind the Judgment impugned extent of the property involved and stake of the parties – delay in filing the application sought to be condoned on the grounds that the counsel appearing for the Appellant had left without informing him – and Appellant came to know about passing of Decree on receipt of notice of execution proceedings – conduct of the Appellant does not castigate him as an irresponsible litigant – delay in filing application sufficiently explained inconvenience caused to opposite party can be compensated by awarding costs. In peculiar facts and circumstances of the case in the interest of justice delay condoned and exparte Decree set aside. In view of the facts and circumstances of the case and also ratio referred above, I am of the opinion that, the appellants / applicants have shown sufficient cause for condonation of delay in filing the present appeal. In

view of the peculiar facts and circumstances of the case and in the interest of justice delay is condoned. Hence, I hold that the appellants / applicants have shown sufficient cause for condonation delay in filing the present appeal. Hence, I answered **Point No.1 in the Affirmative.**

13. **Point No.2** :- In view of my finding on point No.1, I proceed to pass the following:

ORDER

The application filed by the appellants / applicants U/Sec.5 of Limitation Act is allowed. The delay of 13 days in filing the appeal is condoned.

(Dictated to the Judgment Writer directly on computer, corrected and signed by me, then order pronounced in the Open Court, on this the 3rd day of November 2022).

(Hosamani Pundalik)
II Addl. District & Sessions Judge,
Mysuru.