

KAMS010068652022



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

Present: Smt.K.Bhagya, B.A.,L.L.B.

Dated this the 7th day of June 2024

R.A./219/2022

Appellants:

Smt.D.Yashodha & Others

/vs/

Respondents:

D.Mari @ Marappa and Another

ORDER ON IA

The appellant No.1 has filed IA U/s 5 of Limitation Act to condone the delay of 49 months 6 days (4 years 1 month) in preferring this appeal.

2. Along with application, the appellant No.1 has filed her affidavit, in which she has affirmed on oath stating that she has sworn this affidavit on behalf of other appellants also. The averments made in the appeal may be read as part and parcel of this affidavit to avoid repetition of the facts. They have preferred the appeal against the judgment and

decree passed by the Trial Court in respect of item No.1 to 3 of the suit schedule properties in OS.No.457/2007. Item No.1 to 3 schedule properties as mentioned in the application, are the ancestral and joint family properties of themselves and including legal representatives of the deceased Mariyappa @ Marappa and also they were in joint lawful possession and peaceful enjoyment of the same, as an absolute owners, even without effecting partition between themselves in relation to the same by metes and bounds and further they are having equal rights over the same in all respect.

3. Further stated that the present appeal had to prefer on or before 14/08/2016 but till 27/08/2022, in view of the judgment passed on 14/08/2016, they were under depression coupled with lack of judicial knowledge, illiteracy, lack of financial support and also unavoidable circumstances, and due to first and second wave of Covid-19 pandemic, they have not contacted their counsel to take necessary legal steps to question the legality of the said impugned judgment and decree by preferring the appeal at the earliest point of time. Apart from that they have approached the counsel now appearing for them on 28/08/2022 and thereby informed him to take proper steps to question the legality of the said impugned judgment and decree for which, on 29/08/2022 itself they have applied for certified copies of up-to-date order sheet, valuation slip, judgment and decree and other relevant documents pertains to the said OS.No.457/2007 and

obtained the same on 13/09/2022, as such there is 49 months and 6 days delay in preferring the present appeal. The description pertains to aforesaid delay is explained as under:

Sl.No.	Description of events	Dates on which events were completed
1	Judgment and Decree passed on	14/07/2016
2	Copy applied on	29/08/2022
3	Copy ready and delivered on	13/09/2022
4	The Limitation Act in view of 1 st wave of Covid-19 pandemic, was suspended on	20/03/2020 (which was effected from 15/03/2020 and was in force till 08/03/2021)
5	Order dated 20/03/2020 re-called on	08/03/2021
6	Order dated 20/03/2020 was restored on	23/09/2021 (By virtue of said order, Limitation Act was suspended once again from 15/03/2020 to 02/10/2021)
7	Order dated 20/03/2020 was restored on	10/01/2022 (by virtue of that Limitation Act once again was suspended till 28/02/2022 from 15/03/2020)

4. The Hon'ble Supreme Court of India, in view of 1st wave of covid-19 pandemic through an order dated 20/03/2020 was pleased to register a petition bearing Misc.No.03/2020, suo-moto and pleased to suspend the

Limitation till further orders, vide effect from 15/03/2020. The same came to be ended on 08/03/2021 and further the Hon'ble Supreme Court of India, in view of 2nd wave of covid-19 pandemic, once again was pleased to restore the said order dated 20/03/2020 by passing an order on 23/09/2021 in Misc.No.622/2021, the same was in-force till 02/10/2021 from 15/03/2020 and further Hon'ble Supreme Court of India, considering very condition of the 2nd wave of covid-19 pandemic, through an order dated 10/01/2022 passed in Misc.No.20/2021, was pleased to restore the said order dated 20/03/2020 and thereby suspended the Limitation till 28/02/2022. These facts clearly reveal that since 15/03/2020 till 28/02/2022, the Limitation was suspended. Further the Limitation Act, as per law, pertains to this case is concerned is subsisting from 14/08/2016 to 14/03/2020 and 01/03/2022 to 21/09/2022. These facts clearly reveal that there is 49 months and 6 days delay, which excludes time consumed for obtaining aforesaid certified copies. The said delay is not intentional but due to the above said bonafide reason. Moreover grounds mentioned in the appeal clearly reveal that there is no legal bar to condone the aforesaid delay and entertain the above appeal as contemplated under law. If the application is allowed, no hardship or injury will be caused to other side. On the other hand, if the application is not allowed they will be put to great hardship and injury. Hence, prayed to allow the application.

5. For the above said application, the respondents have filed objections by contending that the application filed by the appellants is not maintainable either in law or on facts of the case. The appeal is barred and the delay cannot be condoned on the false reasons assigned in the affidavit. The application is liable to be dismissed in limine. The allegation made in the affidavit in support of the application are all false and not admitted. The allegations that the suit schedule property is in joint possession and the appellants are in lawful possession of the suit schedule property is false. Till 27/08/2022 the appellants were under depression coupled with lack of judicial knowledge etc are false. There was covid-19 pandemic, the appellant was one of the victim, are not admitted. The description of events stated is not admitted. The aspect of limitation pleaded in para No.5 is not admitted. The allegations that delay was not intentional but due to the above said bonafide reasons are all false and not admitted. The application lacks bonafide reasons. The allegations that no hardship is caused if the delay is condoned are all false and not admitted. The judgment and decree in OS.No.457/2007 was passed on 14/07/2016. The appellant applied for the copy of judgment and decree on 29/08/2022 i.e. four years after the judgment and decree. The reasons assigned for the delay is depression, illiteracy and unavoidable circumstances.

6. They have further contended that the appellants were represented by advocate throughout the proceedings. They were well aware of the date of judgment and decree in OS.No.457/2007. The appellant herself has deposed before the Court. Hence, there is no reason to believe that they are prevented for 4 years from taking the copy of the judgment and decree passed in OS.No.457/2007. Hence, on the above said ground, the appeal is liable to be dismissed. The Covid-19 pandemic as stated in this part of the affidavit is not at all relevant. Since even according to them it started from 20/03/2020 with intermittent relaxation. There were intervals of covid-19 three times between 20/02/2020 to 10/01/2022. Even considering that the appellant was prevented from covid-19 from 2020 to 2022, that should not stop appellant from obtaining certified copies of the judgment and decree. The delay is intentional and was not due to bonafide reasons. There is clear legal bar to condone the aforesaid delay and entertain the above appeal. The application is not maintainable. That the appeal after the lapse of 4 years from the date of judgment and decree is an after thought and has been made to make illegal gain. Hence, prayed to dismiss the application.

7. Heard the argument of both side.

8. The advocate for appellants has relied upon the decision reported in **(i)** 2016(5) KCCR 529, **(ii)** 2016(5) KCCR 348, **(iii)** 2016(2) KCCR 1689.

9. Advocate for respondents relied upon the decisions reported in **(i)** Goilal Vs Sundar Lal, AIR 1996 Rajasthan page No.219, **(ii)** Basavaraju and another Vs Special Land Acquisition Officer, AIR 2014 Supreme Court 746. **(iii)** Syed Mujibur Rehaman Vs Abdul Azeez, AIR 2001 Karnataka 104, **(iv)** Munu Vs Jagadish and Others, AIR 2008 (No.6) 765 (CHH), **(v)** Mjji Sannemma alias Sanyasi Rao Vs Reddy Sridevi, AIR 2022 Supreme Court 332, **(vi)** A Valliamani Vs K.P.Murali, 2023(4) KCCR SN 406 (SC), **(vii)** Sri.P.Ramaprasad Vs Sri.Thyagaraj R and Others, 2023(4) KCCR 2902 Karnataka High Court, **(viii)** Ajay Dabra Vs Pyare Ram and Others, 2023 (2) KCCR SN 199 (SC) Supreme Court of India.

10. Now the points that arise for my consideration are:

1. Whether the appellants have made out grounds to condone the delay of 49 months 6 days (4 years 1 month) in filing this appeal?

2.What Order?

11. My answers to the above points are as follows:-

Point No.1 : In the Affirmative.

Point No.2 : As per the final order

for the following:-

REASONS

POINT NO.1:

12. I have gone through the case papers before me.

13. Here, these appellants preferred this appeal against the judgment and decree passed in OS.No.457/2007 by the Prl.Senior Civil Judge and CJM, Mysuru, on 14/07/2016. This is plaintiffs appeal. OS.No.457/2007 was filed by these appellants against these respondents for partition and separate possession in respect of the suit schedule properties. It was dismissed by the Trial Court. Along with the appeal, the appellants also filed this IA U/s 5 of Limitation Act to condone the delay of 49 months 6 days (4 years 1 month) in preferring this appeal. On this IA an enquiry held before this Appellate Court. The appellant No.1 by name D.Yashoda W/o late C.R.Siddaraju has been examined as P.W.1 and 2 documents are marked on her side. She has filed her affidavit in lieu of her chief examination, in which she has reiterated all the averments sworn by her in the affidavit annexed to IA filed U/s 5 of Limitation Act. The Ex.P1 is the outpatient record of this appellant and reports issued by ClearMedi Radiant Hospital, Mysuru. Ex.P2 is the medical reports issued by K.R.Hospital, Mysuru. EX.P1 reveal that in the year 2021 this appellant was diagnosed as **Ca. Cervix (post Operative + post External Beam Radiation Therapy + Chemotherapy)- Stage III A**. She had taken

Chemotherapy. Ex.P2 reveal that in the year 2023 this appellant suffered from **Uterus and ovaries are post op status. No e/o enchancing lesion noted in pelvis** and she had taken treatment. Thus, since 2021 till 2023, this appellant was suffering from severe ill health. This appellant has been thoroughly cross examined by advocate for respondents. In the cross examination she has denied that she was not under depression after 14/07/2016. Further, she has deposed that she had studied up to 7th class. Further, she has deposed as “ಕೋವಿಡ್-19 ಗೂ ಮುನ್ನ ನಾನು ಆರೋಗ್ಯವಾಗಿದ್ದೆ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ. ಕೋವಿಡ್-19 ಗೂ ಮತ್ತು ಮಾನ್ಯ ಸುಪ್ರೀಂ ಕೋರ್ಟ್ ನೀಡಿದ್ದಂತಹ ರಜೆಗಳಿಗೂ ಹಾಗೂ ನೀವು ಅಪೀಲನ್ನು ಸಲ್ಲಿಸಲು ಯಾವುದೇ ರೀತಿಯ ಸಂಬಂಧವಿರುವುದಿಲ್ಲ ಎಂದು ಮಾಡಿದ ಸಲಹೆಗೆ ಸಾಕ್ಷಿ, ನನಗೆ ಹಣಕಾಸಿನ ತೊಂದರೆ ಇತ್ತು ಎನ್ನುತ್ತಾರೆ. ದಿ: 23.05.2021 ರಂದು ನನಗೆ ಗರ್ಭಕೋಶದ ಕ್ಯಾನ್ಸರ್ ಆಗಿತ್ತು ಎನ್ನುವ ಬಗ್ಗೆ ದಾಖಲಾತಿಯನ್ನು ಹಾಜರುಪಡಿಸಿದ್ದೇನೆ. ಅದಕ್ಕೂ ಮತ್ತು ನಾನು ಅಪೀಲನ್ನು ಸಲ್ಲಿಸಲು ಯಾವುದೇ ರೀತಿಯ ಸಂಬಂಧವಿರುವುದಿಲ್ಲ ಎನ್ನುವುದು ಸರಿಯಲ್ಲ”. Thus, she has deposed that she was under financial problem also. The Ex.P1 and 2 reveal that from 2021 to 2023 she had taken chemotherapy with injunction for her uterus cancer. Of course, in the middle, i.e. from 2019 to 2022 there was covid-19 and the Hon’ble Supreme Court has relaxed the limitation period through its orders. The judgment was pronounced on 14/07/2016. But, the appellant No.1 has clearly deposed as “ನನಗೆ ಹಣಕಾಸಿನ ತೊಂದರೆ ಇತ್ತು”. So, she had not filed the appeal within the limitation period. In this regard,

the learned counsel for the appellant has relied upon the judgment of our own High Court reported in **2016(5) KCCR 529 between Smt.Gulabi Vs Manju Bhovi and Others**, in which it is held as **"A. Limitation Act, 1963-Section 5-Appeal-Delay-Dismissal of appeal against decree on ground of delay-When parties were adjudicating their claims, Courts should not deprive their rights on technical ground of delay-Appellant explaining delay properly-Delay of 465 days condoned-Impugned order set aside-Matter remanded to first appellate Court.**

B. Limitation Act, 1963-Section 5-Delay-Condonation of-Expression 'sufficient cause'-Is adequately elastic to enable Courts to apply law in a meaningful manner which subserves ends of justice-Substantial rights of parties cannot be allowed to be defeated on technical grounds".

14. He has also relied upon the decision of our own High Court reported in 2016(5) KCCR 348 between Sri.M.Nagesh Suvarna Vs Sri.Narayana, in which it is held as **"B. Limitation Act, 1963-Section 5-Condonation of delay-Where the suit is in respect of immovable property and the rights of the parties should not be deprived only on the ground of technicality. When substantial justice and technical considerations are pitted against each other, only the substantial justice should prevail. In a country like ours where there is so much poverty, ignorance,**

illiteracy, that it will not be possible to presume that every one knows the law of limitation to file an appeal and other legal proceedings within the period prescribed by law and the ends of justice require that the application for condonation of delay should have been granted by the lower Courts”.

15. In the same way the learned counsel for the appellant has also relied upon the decision of our own High Court reported in **2016(2) KCCR 1689, (Dharwad Bench) between Rangappa and Others Vs Nagappa and Others,** in which it is held as **“Limitation Act, 196-Section 5-Suit for declaration and permanent injunction-Dismissal of-Appeal against-Delay of 380 days-Application for condonation of-Approach of Court has to be pragmatic and not pedantic-Delay caused due to ignorance of law and poverty-Lis involving immovable property-Appellate Court while confirming judgment and decree of trial Court ought to have given an opportunity by condoning delay instead of dismissing appeal-Order impugned set aside-Application for condonation of delay allowed”.**

16. The ratios laid down in the above cited decisions optly applicable to the present case on hand. Here, the appellant No.1 has deposed that they were in financial problem and later due to covid-19 unable to prefer appeal, thereafter she was diagnosed with uterus cancer and under

gone treatment of chemotherapy with injections. Regarding, these aspects the appellant No.1 has produced the documents.

17. The learned counsel for the respondents also relied upon as many as 8 decisions of other High Courts as well as Hon'ble Apex Court. **In 2023 (2) KCCR SN 199 (SC) Supreme Court of India, between Ajay Dabra Vs Pyare Ram and Others**, in which it is held as **"A. Limitation Act, 1963-Section 5-Civil Procedure Code, 1908-Section 149-Filing of appeal-Delay of 254 days-Plea of paucity of funds for payment of Court fee-Being a successful businessman, appellant's plea unsustainable-Even assuming that at relevant point of time he did not possess necessary funds for payment of Court fee, he could have filed appeal within period of limitation with insufficient Court fee, could seek permission from Court to pay deficient Court fee within time granted by Court-Having not done so, plea of appellant not sustainable-No fault can be found with rejection of application seeking condonation of delay"**. Here, the facts and circumstances of the above case and the present on hand are different. In the above cited decision the appellant was a businessman. Here, in this case this appellant No.1 is a widow and a house wife living in a remote village of Mysuru Taluk.

18. This Court has gone through the ratio laid down in other citations cited by the learned counsel for the

respondent. The said citations reveal that "sufficient cause" should be shown by the appellant to condone the delay. As already observed above, these appellants are villagers. The appellant No.1 i.e. P.W.1 is a widow. Moreover, covid-19 also entered from 2019 to 2022. So, the Hon'ble Supreme Court of India has passed an order regarding the relaxation of limitation period. Further, the medical documents clearly reveal that this appellant No.1 was suffering from uterus cancer from 2021 to 2023 and took chemotherapy treatment.

19. So, by going through the evidence led by the appellants on Sec.5 of Limitation Act and also by relying upon the ratio laid down in the decisions cited by advocate for appellants, this Court is of the view that the appellants have made out grounds to allow the IA filed U/s 5 of Limitation Act. Hence, I answer point No.1 in the **Affirmative**.

POINT NO.2:

20. In the result, I proceed to pass the following:

ORDER

The IA filed by the appellant U/s 5 of the Limitation Act is hereby allowed.

(Dictated to the Stenographer directly on computer and then pronounced in the open court on this the 7th day of June 2024)

(K.Bhagya)
III Addl. District & Sessions Judge,
Mysuru.

(Order pronounced in open Court vide separate
Order)

ORDER

The IA filed by the appellant U/s 5 of the
Limitation Act is hereby allowed.

III AD &SJ, Mysuru.