

KAMS080013722023



**IN THE COURT OF PRINCIPAL SMALL CAUSES & SENIOR
CIVIL JUDGE & M.A.C.T. AT MYSURU.**

Presided Over by SRI AFTHAB.K

M.V.C./827/2023

Dated this the 13th day of February, 2025

Plaintiff/s:

Sri. Syed Khan S/o. Syed Javeeth,
Age: 24 years, R/at No.2636, 3rd cross,
Sunny Chowka, Mandi Mohalla, Mysuru-570021.

(By Sri. H.R. Mahadeva Prabhu, Advocate)

Vs.

Defendant/s :

1. Smt. Gowramma W/o. Boregowda,
R/at Kudaragundi, Kasaba hobli,
Maddur taluk, Mandya district.
(Driver of car bearing reg No.KA-11/N-7621)

2.The Manager,
Cholamandalam MS General Insurance Company,
No.230, 5th cross, 12th main road,
Saraswathipuram, Mysuru-570009.
(Insurer of the car bearing reg No.KA-11/N-7621)

(R1 – Sri. P.B. Manju, Advocate)

(R2 – Sri. Mithun V.G., Advocate)

* * * *

-: Parties to IA:-

Sri. Syed Khan

Applicant

V/s

Sri. Naveen Kumar K.B. S/o. Boregowda

Opponent

COMMON ORDER ON IA II to IV

1. The applications under consideration i.e., IA-II to IV are filed by the petitioner under section 5 of Limitation Act seeking condonation of delay in filing the applications for setting aside the abatement order, Order XXII Rule 9 of CPC seeking that the order of abatement be set aside and under Order XXII Rule 4 of CPC seeking that the petitioner be permitted to bring the Lrs of deceased respondent No.1 on record.

2.2. In support of the application it is contended that the petition is filed seeking compensation for injuries sustained in an RTA. The opponents are none other than the legal heirs of the deceased respondent No.1. Since the respondents are the legal heirs of the deceased respondent no.1, and their impleadment in the present petition is very much necessary for the purpose of proceeding with the petition on merits. Further the delay in filing application was because the opponents are the only legal heirs of the deceased as such they could not file the applications earlier. Further if the applications are not allowed, the applicants will be put to irreparable loss and injury, on the other hand by allowing this application no prejudice

will be caused to the opponents. On these grounds it is sought that the application be allowed and applicants be impleaded in the place of deceased petitioner.

3. In response to the notice issued by this tribunal the proposed respondent No.1(a) appeared before the tribunal and sought time to file objections.

4. Heard the learned counsel for the petitioner on IA No.II to IV.

5. On careful perusal of application and the affidavit in support of it, the following points arise for my consideration:

1. Whether the opponents are required to be impleaded in the place of deceased respondent No.1 in their capacities as the legal heirs of deceased respondent No.1?

2.What order?

6. After carefully perusing the records available before it at this stage, this court proceeds to answer the afore-raised points for consideration as under:

- (a) *Point No. i* : *In the affirmative.*
 (b) *Point No. ii* : *As per the final orders,*
 for the following reasons.

REASONS

POINT No.(i) :

7. At the very outset it is necessary to note that the applications are filed by the petitioner seeking impleadment of the opponents in the place

of deceased respondent No.1. While dealing with an application of this nature, this court needs to consider whether the applications are in time, secondly whether the opponents are indeed the legal heirs of the deceased parties to the petition; thirdly whether the right to sue survives against the opponents.

8. In this regard in the application it is specifically contended that the respondent No.1 has demised as such it is clear that the applications under order XXII Rule 4 of C.P.C. and under Order XXII Rule 9 of CPC are filed belatedly. This is so because the application to bring the legal heirs of deceased party should be filed within 90 days if not the petition stands abated as against the deceased party; and the application seeking setting aside of the abatement shall have to be filed within 60 days from the date of abatement.

9. As regards the delay the applicant, claims that due to lack of information, the applications could not be filed earlier. Though the grounds urged are vague, but considering the fact that the opponents have not filed their objections, this court should not have any impediment to allow the application. The Hon'ble High Court of Karnataka in its judgment rendered in a case of *Rangappa and others V/s. Nagappa and others* reported in **2016 (2) KCCR 1689** relying upon the decision of Hon'ble Supreme Court, observed thus:

The Hon'ble Supreme Court while considering the provisions of Section 5 of the Limitation Act in the case of Collector(LA) V/s. Katiji, reported in 1987(2) SCC 107 has held that:

“ The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act, 1963, in order to enable the Courts to do substantial justice to the parties by disposing of matters on ‘merits’. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Court. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

- 1. Ordinarily a litigant does not stand to benefit by lodging an petition late.*
- 2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
- 3. ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay?*

The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the petition”.

Further the Hon'ble Supreme Court in the judgment in ***Dhiraj Singh V/s. State of Haryana***, reported in (2014) 14 SCC 127 observed that, it is the obligation of the Court while dealing with the application for condonation of delay, *the approach of the Court to be pragmatic and not by pedantic*

substantial rights of the parties cannot be allowed to be defeated on technical grounds by taking hyper technical views of self-imposed limitations.

10. Moreover, while considering the application, the contention of delay has to be liberally as the intention of the legislature in prescribing the period of limitation is to avoid unnecessary and long delay in taking necessary steps. But, the focus of the court must be ensure with parties to get ample opportunity to put forth their case. Further the decision rendered by the Hon'ble High Court of Karnataka in *Nagendraiah Vs. Putteerama and others* reported in **2001- AIR Kant H.C.R 897** in which the Hon'ble High Court of Karnataka in its obiter dicta has observed that *the delay must be condoned with the object of doing substantial justice to the parties and to give them a chance to have their say on merits.* Further the Hon'ble Supreme Court in the judgment in *Dhiraj Singh V/s. State of Haryana*, reported in **(2014) 14 SCC 127** observed that, it is the obligation of the Court while dealing with the application for condonation of delay, the approach of the Court to be pragmatic and not by pedantic substantial rights of the parties cannot be allowed to be defeated on technical grounds by taking hyper technical views of self-imposed limitations.

11. This brings the discussion to the next aspect of the matter which is whether the opponents are indeed the legal heirs of the deceased respondent No.1. On this aspect, the opponents have not filed their objections and in fact submitted that the application be allowed, hence it is deemed that the opponents do not deny any of the facts mentioned in the affidavit and the application. Hence, this court is of the opinion that the opponents will not be subjected to any prejudice or injustice if they are

impleaded in the place of deceased respondent No.1 in the petition in their capacities as legal heirs of the respondent No.1.

12. Furthermore there should not be any doubt in the mind of this court that the petition is filed seeking compensation, as such this court should not have any impediment to hold that the opponents are required to be impleaded in the place of deceased respondent No.1 and that the applicants have made out sufficient grounds to implead them in the present petition. For the foregoing reasons, this court finds no hesitation in holding *Point No.1 in the affirmative*.

13. **Point No.ii:**

In view of the fact that point No.1 is held in the affirmative, this court passes the following:

ORDER

“IA-III under Section 5 of the limitation act is hereby allowed.

Consequently the delay in seeking setting aside the abatement order is condoned.

The IA-IV under Order XXII Rule Rule 4 of CPC filed by the petitioner is hereby allowed.

Consequently the order of abatement of case as against the deceased respondent No.1 is set aside.

Further IA-II under Order XXII Rule Rule 9 of CPC filed by the petitioner is hereby allowed.

Consequently opponents are impleaded as respondent No.1 (a) in the place of deceased respondent No.1.

The petitioner shall carry out the necessary amendment in the cause title of the petition and file amendment plaint in accordance with Order VI Rule 15 of CPC (Karnataka Amendment).“

(Directly typed by me, corrected and then pronounced by me in the open court, this the 13th day of February, 2025)

(AFTHAB.K.)
Prl. Judge, Court of Small Causes
& MACT., Mysuru.