

KAMS080015892022



**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./951/2022**

**Dated this the 23<sup>rd</sup> day of April, 2025**

**Plaintiff/s:**

Sri. Shashidhar B.S. S/o. Late Shambaiah,  
Age: 44 years, R/at #19, Block No.18, BEML Layout,  
Srirampura 2<sup>nd</sup> stage, Mysuru.

**(By Sri. Kantharaju P., Advocate)**

Vs.

**Defendant/s :**

1. Sri. Arul Kumar Mical S/o. Francis,  
Age: 40 years, R/at #17/A, KRS main road,  
Gokulam 1<sup>st</sup> stage, V.V. Mohalla,  
Mysuru.  
(Driver of the Omni van bearing reg No.KA-09/MA-9714)

2. Sri. Bandigowda C. S/o. Late Channegowda,  
Age: 45 years, R/at #32, 4<sup>th</sup> cross,  
Mahadeshwara Temple road,  
Kumbarakoppal, Mysuru-16.  
(Owner of the Omni van bearing reg No.KA-09/MA-9714)

3. ICICI Lombard General Insurance Co. Ltd.,  
#204, Mythri Arcade, Kantharaja Urs road,  
Saraswathipuram, Mysuru-570009.  
(Insurer of the Omni van bearing reg No.KA-09/MA-9714)

**(R3 – Sri. Jagannath Suresh Kumar, Advocate)**

\* \* \* \*

**-: Parties to IA:-**

Sri. Shashidhar B.S.

**Applicant**

V/s

Sri. Arul Kumar Mical and others

**Opponent**

**COMMON ORDER ON IA III to V**

The applications under consideration i.e., IA-III to V 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.2 on record.

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.2. Since the opponents are the legal heirs of the deceased respondent No.2, 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 details of the opponents who are the only legal heirs of the deceased came to the knowledge of the petitioner

recently as such he 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 opponent. On these grounds it is sought that the application be allowed and applicants be impleaded in the place of deceased petitioner.

3. After service of notice on IA-III to V, proposed respondent No.2(a) to (c) appeared before the tribunal through their counsel but did not file their objections to main petition, hence objections to IA-III to V came to taken as not filed.

4. Heard the learned counsel for the petitioner on IA No.III to V.

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

*1. Whether the opponent is required to be impleaded in the place of deceased respondent No.2 in her capacity as the legal heir of deceased respondent No.2?*

*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 opponent in the place of deceased respondent No.2. While dealing with an application of this nature, this court needs to consider whether the applications are in time, secondly whether the opponent is indeed the legal heir of the deceased parties to the petition; thirdly whether the right to sue survives against the opponent.

8. In this regard in the application it is specifically contended that the respondent No.2 has demised on 29.08.2023 and the application is filed on 15.11.2024 as such the application 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 suit 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. Hence in this case the application under order XXII Rule 4 of CPC should have been filed on or before 29.10.2023 and in default the application under order XXII Rule 9 of CPC should have been filed on or before 30.01.2024, this goes to show that there is a delay of more than 1 year in filing the application for setting aside of abatement order. Perhaps the applicant had filed the application for impleading the LRs earlier but did not take steps as such the application came to be disposed as it resulted in the applicants filing these applications.

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 opponent 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 suit 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 suit”.*

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 opponent are indeed the legal heir of the deceased respondent No.2. On this aspect, the opponents have not filed their objections and in fact submitted that the applications 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.2 in the suit in their capacities as legal heir of the respondent No.2.

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 opponent are required to be impleaded in the place of deceased respondent No.2 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.2 is set aside.*

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

*Consequently opponents are impleaded as respondent No.2 (a) to (c) in the place of deceased respondent No.2.*

*The petitioner shall carry out the necessary amendment in the cause title of the suit 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 23<sup>rd</sup> day of April, 2025)

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