

KAMS710018812023



**IN THE COURT OF I ADDITIONAL CIVIL JUDGE AND  
JMFC AT T.NARASIPURA**

**Dated this the 27<sup>th</sup> day of January 2026**

**Present: Smt. Niveditha N., B.A.L., LL.B, LL.M.,  
I Additional Civil Judge & JMFC., T.Narasipura.**

**Misc/13/2023**

**Petitioner** : Basavegowda

**V/s**

**Respondents** : D.Devaraju and Others

**ORDER ON THE PETITION FILED BY THE PETITIONER**

**U/s 5 of Limitation Act**

The petitioner has filed above petition seeking to condone the delay of 39 days in filing the above petition.

2. a. In the petition the petitioner has submitted that, the above petition is filed against the respondents to set-aside the ex-parte judgment and decree passed in OS.No.162/2021.

Further, the respondent No.1/plaintiff No.1 filed a false suit against the petitioner/defendants No.2 to 4 in OS.No.162/2011 before this Court for the alleged relief of permanent injunction on the basis of false and concocted registered sale deed dated 24/03/2017 under a false set of facts and allegations in respect of the alleged suit schedule property even without having actual possession over the suit schedule property. Since the respondents No.2 to 4 have readily not available at the time of filing of this petition, hence he has filed the above petition. Further the petitioner and the respondents No.2 to 4 appeared through counsel and filed detailed written statement resisting the false suit of the respondent No.1/plaintiff.

b. The petitioner and respondents No.2 to 4 were unable to appear before the Court regularly due to illness of their mother and he was unable to appear before the Court when the case was called on for hearing and also unable to contact his counsel to cross examine P.W.1.

c. Further, he came to the knowledge of the ex-parte judgment and decree passed in OS.No.162/2021 on 04/08/2023, when the petitioner No.1/defendant No.1 approached his counsel asking for date of hearing of the said suit so as to proceed with the said suit in accordance with law.

Accordingly, on the same day, he has got applied for certified copy of the ex-parte judgment and decree and thereby obtained the same on 31/10/2023. Where by it was also informed to him that the cross of P.W.1 is taken as nil in the said suit and it was decreed ex-parte.

d. Further, non appearance of the petitioner No.1 respondents No.2 to 4 before the Court, when the suit is called for hearing and non filing of the above petition within time as bonafide and un-intentional. Hence, this application.

3. On the other hand, the respondent No.1 has filed objections and contended that OS.No.162/2021 is filed against the petitioner and respondents No.2 to 4. The petition filed by one of the defendant by name Basavegowda is not at all maintainable under the provisions of law. On this ground also the petition is liable to be dismissed. The relief granted to all the defendants is common to all when such being the case, the petition cannot be filed by one of the defendant. Further, OS.No.162/2021 is filed for permanent injunction by the respondent No.1 against the petitioner and other respondents. Further, the respondent No.1 is the purchaser of schedule property and got the khatha changed into his name, the petitioner, other respondents are not having any manner of right, title, interest started interfering with the peaceful

possession, enjoyment and accordingly suit is filed defendants filed a written statement intentionally not cross examined the witness, not leading any evidence and only after passing of decree only to drag on the proceedings the petition is filed. Hence, prays to dismiss the application with costs.

4. Heard the arguments..

5. The following points are arise for my consideration:

1. Whether the petitioner has made out grounds to allow the application by condoning the delay?

2. What order?

6. Perused the documents available on record.

7. My answer to above points are as under:

Point No.1 : In the Affirmative,

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

### **REASONS**

**8. Point No.1:** The petitioner has filed the petition seeking for set-aside the ex-parte judgment and decree passed in OS.162/2021 dated 01/08/2023. The contention of the petitioner is that, the Respondent NO.1 has filed the suit in

OS.No.162/2021 seeking for the relief of permanent injunction against the petitioner herein. Due to ill health of the mother of the petitioner, he could not able to appear before the Court and he was unable to contact his counsel. Hence, he prays to condone the delay in filing the above petition.

9. The respondent No.1 has filed objections to the above application by denying the petition and contended that he has filed the suit in OS.No.162/2021 against the petitioner and other respondents and he is the purchaser of the suit schedule property and petitioner and other respondents have no rights over the suit schedule property though the petitioner filed written statement but not cross examined the witness and not led the evidence. Only to prolong the case, the petitioner has filed the present petition. In spite of several opportunity granted, the petitioner has failed to contest the said suit. Hence, he prays to dismiss the application.

10. On perusal of the materials available on record, it discloses that the respondent No.1 has filed the suit in OS.No.162/2021 seeking for permanent injunction against the petitioner and respondent No.2 to 4. The petitioner was filed the written statement in the said suit. However, the petitioner and other respondents have failed to cross examine

the witness in the said suit and they failed to lead evidence to prove their defence. Hence, the said suit was decreed on 01/08/2023. The present petition is filed on 11/12/2023. Therefore, there is a delay of 1 month 9 days to file the above petition. Hence, the petitioner has made out grounds to condone delay and the delay in filing the present petition is condoned. In view of the above discussion, the delay in filing the above petition is condoned. **Hence, this court proceeds to answer Point No.1 in the Affirmative.**

**11. Point No.2:** In view of the answer and reasons stated in point No.1, this Court proceed to pass the following;

**ORDER**

IA.No.I filed U/s 5 of Limitation Act by the petitioner is allowed on cost of Rs.1,000/- and thereby the delay is condoned.

[Dictated to the Stenographer, transcribed by her and corrected by me and pronounced in the Open Court on 27<sup>th</sup> day of January 2026]

**I Addl.Civil Judge & JMFC.,  
T.Narasipura.**

**Misc.13/2023**

(Order pronounced in open court vide separate order)

**ORDER**

IA.No.I filed U/s 5 of Limitation Act by the petitioner is allowed on cost of Rs.1,000/- and thereby the delay is condoned.

**I Addl.Civil Judge & JMFC.,  
T.Narasipura.**