



**IN THE COURT OF THE III ADDITIONAL DISTRICT &
SESSIONS JUDGE, RAMANAGARA**

: PRESENT:

**Sri. G.Raghavendra, B.Sc., LL.B.,
III Addl. District & Sessions Judge,
Ramanagara.**

DATED THIS THE 20th DAY OF SEPTEMBER - 2024

M.A. No. 28/2024

Between

Sri. B. S. Dhananjaiah, APPELLANT / Defendant No.8

-AND-

Smt. Shivamma & Another, ...RESPONDENTS / Plaintiffs

I.A. No. I/2024

Between

Sri. B. S. Dhananjaiah, ...APPLICANT/ APPELLANT

-AND-

Smt. Shivamma & Another, ... OPPONENTS/RESPONDENTS

ORDER

This I.A.No.I/2024, under Section 5 of Limitation Act, 1963
R/W. Section 151 of Code of Civil Procedure, 1908 is filed by the
applicant/appellant to condone the delay of 63 days in filing the
miscellaneous Appeal.



2. The Opponents/Respondents have filed objections to this I.A.No. I/2024.

3. The appellant was defendant No.8 and respondents were plaintiffs in O.S.No.46/2021.

4. Heard the counsels for both the parties.

5. On the basis of contents of I.A.I/2024, objection to I.A. I/2024 and on the submission of both parties counsel the following points arise for my consideration :

1) Point No.1:- Whether the appellant satisfy that he had sufficient cause for not preferring this miscellaneous appeal within prescribed period of 30 days as per Article 116(b) of Limitation Act, 1963?

2) Point No.2:- What order?

6. My answer to the above points are as under:

Point No.1: In the Affirmative

Point No.2: As per the final Order for the following:-

REASONS

7. **POINT NO.1:** In the affidavit accompanied the I.A. the appellant has stated that he has filed this appeal against the order dated 19.02.2024 passed by the Hon'ble Senior Civil Judge



and JMFC, Magadi in O.S.No.46/2021, allowing the I.A. No.5 filed under Order XXXIX Rule 1 and 2 of CPC by the plaintiffs seeking interim injunction restraining him from putting up construction over Item No.2 property. He had filed I.A.No.8 to vacate the order dated 19.02.2024 and the same was rejected by order dated 28.03.2024. He preferred a composite Writ Petition challenging the Orders passed on I.A. Nos.1. 7 and 8. Thereafter, he was advised to file a separate appeal challenging the orders passed on I.A. No.8 and consequently I.A. No.5 as the same are appealable orders as per order XLIII of CPC. Writ Petition was preferred on 30.04.2024 and thereafter he fell seriously ill and suffering from cervical spondylitis and was unable to move around and was unable to instruct his counsel for preparation and filing the appeal within time. He has applied for certified copy on 21.02.2024 and the same was received on 26.02.2024. The said certified copy was filed before the Hon'ble High Court of Karnataka in the Writ Petition No.10717/2024. Thereafter, the summer vacation commenced for courts in Karnataka from 27.04.2024. After he became aware that he had to file a separate appeal, he applied for a fresh certified copy of the orders on



27.05.2024 and received the certified copy on 28.05.2024 and immediately thereafter he has filed this appeal.

In the objection to this I.A, the respondents have contended that the appellant has not given specific reasons for the delay in filing the said appeal and the appellant has filed the said false appeal by creating false reason and documents and in support of the above contention as produced the following citations:

1. 1998 0 Supreme (Kar) 18; 1998 3 CivCC 685;
1998 5 KarLJ 246 (Canara Bank, Arasikere Vs. B.E.
Seddappa)
2. 2016 0 Supreme (Kar) 267 2017 0 AIR (Kar) 47;
2017 4 AIR (Kar) (R) 237; 2017 1 KCCR 124 (Smt.
Anasuya & Another Vs. Nasiruddin)
3. 2012 0 Supreme (Kar) 165; 2014 2 KarLJ 259;
2014 3 KCCR 2640 (A. C. Francis (since deceased) by
his L.Rs. Vs. B.K. Surendrakumar and Another.)

In the above citations, the delay was not condoned on the reason that appellant failed to show convincing reasons.

8. The appellant has furnished a treatment sheet issued by Orthopedic Surgeon, K. C. General Hospital, Malleshwaram



which shows on 15.04.2024 appellant visited the above hospital with complaint of neck pain and back ache with history of known case of cervical spondylitis since 2 years, with further complaint of neck movements painful and limited and lumber movements painful and limited and was advised for rest for 4 to 6 weeks from 15.04.2024.

9. The order challenged by this appeal was passed on 19.02.2024, thereafter the appellant has preferred writ petition No.10710/2024 before Hon'ble High Court of Karnataka on 03.04.2024, thereafter he has approached the Hospital on 15.04.2024 and was advised to take rest for 4 to 6 weeks from 15.04.2024 and the appellant has preferred this appeal on 01.06.2024.

10. This court is of the opinion that, Appellant able to satisfy that he had sufficient cause for not preferring this miscellaneous appeal within prescribed period of 30 days as per Article 116(b) of Limitation Act, 1963. Hence, I answer **point No. 1 in the Affirmative.**

11. **Point No.2:** - In view of the answer I arrived on point No. 1, I proceed to pass the following-



ORDER

I.A.I/2024, under Section 5 of Limitation Act, 1963 R/W. Section 151 of Code of Civil Procedure, 1908 filed by the applicant/appellant is allowed.

The delay of 63 days in filing this Miscellaneous Appeal is condoned.

(G. RAGHAVENDRA)
III Addl. District & Sessions Judge,
Ramanagara.