



**IN THE COURT OF THE PRL. SENIOR CIVIL JUDGE  
AND CJM AT RAMANAGARA**

**Dated : This the 15<sup>th</sup> day of June, 2023**

**Present:- Smt.SARASWATHI.K.N.,  
B.A.L., L.LM.,  
Prl. Senior Civil Judge & CJM.,  
Ramanagara.**

**Misc.No.02/2020**

**Petitioners :** Sri. Shivalingaiah and another

**(By Sri. M.A.K. Adv.,)**

**V/s**

**Respondents:** Smt. Boramma and others

**(R.1 & 4 Sri. K.M.G.Adv., R.5,7  
to 9 Sri. A.D.D. Adv., R.2, 3 and  
6-Exparte.)**

**I.A.No.I**

**Applicants :-** Sri. Shivalingaiah and another  
**- (Petitioners)**

**-V/s-**

**Opponents :** Smt. Boramma and others

**- (Respondents)**

**\* \* \* \* \***



**ORDER ON IA No.I**

The counsel for the Petitioners has filed this application to condone the delay of 90 days in filing the present petition.

2. In the affidavit sworn in support of the present application the Petitioner No.1 has sworn that they have filed this petition seeking to set aside the Judgment and Decree dated 23.08.2019 passed in O.S.No.121/2014.

3. That, he is presently aged about 65 years and he is an agriculturist hailing from rural background. He was not aware of the suit filed by the Plaintiffs against them and that his father Siddaiah was a party to the said suit and after his death, he was not aware of the facts and circumstances of the suit. He came to know about the said fact when the Plaintiffs started whispering all over the Village that they had won the case.



4. Thereafter, he approached his counsel and applied for the certified copies of the same on 11.12.2019 and he has obtained the certified copies of the same on 04.01.2020. Only thereafter, he came to know about the dismissal of the said suit. In the meanwhile, he gave instructions to his counsel to file the present petition and this caused the delay of 90 days. Therefore the delay is for bonafide reason and beyond his control and that by allowing this application, no loss or hardship is going to be caused to the other side and on the other hand, by rejecting the same, he will be put to great loss and hardship. Accordingly, he has prayed to allow the application.

5. Per contra, the counsel for the Respondent No.1 and 4 has filed objection to the present application by opposing to allow the same on the ground that the contents of the affidavit sworn by the Petitioner No.1 are entirely false and frivolous.



6. It is denied that the Petitioners were prevented from sufficient cause from filing the petition within the stipulated period of time. Hence these among other grounds, it is prayed to dismiss the present application.

7. In view of the objections filed by the Respondent No.1 and 4 to the present application, the case has been posted for enquiry on I.A.No.I. In this regard, the Petitioner No.1 examined himself as PW.1. He has been cross-examined by the counsel for the Respondent No.1 and 4. Ex.R1 is got marked through the PW.1 by the counsel for the Respondent No.1 and 4 in his cross-examination.

8. Heard the arguments of the counsel for the Petitioners and the Respondent No.1 and 4 and perused the materials on record.



9. Now the following points would arise for the consideration of this court are :-

1. *Whether the Petitioners have made out grounds by condone the delay of 90 days as sought for in I.A.No.I?*
2. *If so, what order?*

10. My answers to the above points is as under:-

- Point No.1:- In the Affirmative;  
Point No.2:- As per the final order  
for the following:-

**REASONS**

**11. Point No.1:-** Admittedly the present petition is filed by the Petitioners after a lapse of 90 days from the time stipulated for filing the present petition. In order to substantiate their contentions raised in the present application, the 1<sup>st</sup> Petitioner examined himself as PW.1 and filed his affidavit, in which he reiterated the contents of the affidavit sworn in support of the present application.



12. PW.1 has been cross-examined by the counsel for the Respondent No.1 and 4. During the cross-examination of PW.1, suggestions are directed to him to the effect that he was regularly attending the Court in O.S.No.121/2014 and that his father was also party to the suit and after his death, his children I.e., he and the other Petitioners were arrayed as the parties to the said suit. The answer of PW.1 to this suggestion is that, there was no service of notice to any of them.

13. However, it is pertinent note that, the attempt made by the learned counsel for the Respondent No.1 and 4 to elicit from the P.W.1 that they were aware of suit in O.S.No.121/2014 which was disposed off, intentionally they failed to file this petition well within the time is not been successful. Further P.W.1 has also pleaded ignorance with regard to the filing of the Appeal by the Respondents No.5, 7 and 8 before the Hon'ble High Court of Karnataka.



14. It is further suggested to PW.1 that, even in the said Appeal proceedings, they have appeared through their Counsel. Though he initially denied the same, subsequently he admitted that the certified copy of the vakalathnama confronted to him as per Ex.R.1 bears his signature. Through Ex.R.1, the counsel for the Respondent No.1 and 4 has elicited from the PW.1 that they have filed the RFA No.117/2020 before the Hon'ble High Court of Karnataka.

15. It is pertinent note that, the reason assigned by the Petitioners for the non-filing of the present petition within time is that, they had to obtain the certified copies regarding the order passed in O.S.No121/2014. Though PW.1 has been formally cross-examined by the learned counsel for the Respondent No.1 and 4, nothing is elicited from so as to come to the conclusion that, intentionally there was delay on their part in filing the present petition. Therefore at this stage without adhering to strict technicalities, it is necessary to



condone the delay, so as to enable the Petitioners to proceed with the petition on the main in matter. However the harassment caused to the other side due to delay needs to be compensated by imposing costs. Accordingly, this Point is answered in the **“Affirmative”**.

**16. Point No.2:-** In view of my answer to Point No.1, I proceed to pass the following:-

### **ORDER**

I.A.No.I filed by the Petitioners under Sec.5 of the Limitation Act is hereby allowed on cost of Rs.500/-.

The delay of 90 days in filing the petition is hereby condoned.

The parties are permitted to proceed with the matter on main petition.

***(Dictated to the Stenographer through electronic media, the transcript there of is corrected and then pronounced by me in the open Court on this the 15<sup>th</sup> day of June, 2023).***

Prl.Senior Civil Judge & CJM,  
Ramanagara.



**ANNEXURE**

**1. List of Witness/s examined by the Petitioners:-**

P.W.1 : Sri. Shivalinganna;

**2. List of documents exhibited by the Petitioners:-**

- Nil -

**3. List of Witness/s examined by the Respondents:-**

- Nil -

**4. List of documents exhibited by the Respondents:-**

Ex.R.1 : Vakalathnama of RFA 117/2020.  
(through PW.1)

Prl.Senior Civil Judge & CJM,  
Ramanagara.