



**7IN THE COURT OF THE 1st ADDITIONAL SENIOR CIVIL
JUDGE AND JMFC, RAMANAGARA**

Dated This 05th day of November, 2024

PRESENT:

Sri. Mahesh B.T.,
B.Com., LL.M.,
1st Addl., Senior Civil Judge and JMFC,
Ramanagara.

RA.No.2/2022

Appellants :- Sri.M.Boraiah and Others

V/s

Respondents :- Sri.V.Venkataramana and Another

*** * ***

I.A.No.III

Applicant :- Sri.M.Boraiah
- -(Appellant No.1)

V/s

Opponents :- Sri.V.Venkataramana and Another
- - (Respondents)

*** * ***

ORDER ON I.A.No.3 FILED U/SEC.5 OF LIMITATION ACT.,

The applicant/appellant No.1 filed the application to
condone the delay in preferring this appeal.



2. As per the affidavit of the applicant/appellant No.1 has stated that, in the Trial Court the plaintiff filed the suit for specific performance of contract in respect of the suit schedule property against defendants. On 30.11.2021 in OS.No.270/2014 the Trial Court has decreed the suit and that they have challenged the above judgment and decree in this appeal.

3. It is further stated that, after judgment and decree of the Trial Court, on 02.12.2021 he applied for certified copy of judgment and decree. On 30.12.2021 they were issued. Thereafter, he was suffering from illness and was obtaining treatment. Hence, he could not contact the counsel and get the appeal prepared. Further it is stated that, he has now recovered and immediately got the appeal prepared and filing it. The delay in filing this appeal is due to these reasons and is bonafide. It is therefore just and necessary that the delay in filing this appeal be condoned and the appeal be received. No loss or



prejudice will be caused to the respondents if the delay in filing this appeal is condoned and the appeal received. But, if the same is refused, he will be put to great loss and injury which cannot be compensated by any means. He has good case on merits and valid grounds to urge in the appeal. Hence, the application.

4. The opponent/respondents filed statement of objections. In the objection it is contended that the suit is not maintainable and contended that, the appellants have not narrated the sufficient grounds to condone the delay and the grounds urged by the appellant in his affidavit is not supported with the relevant documents. Further contended that, there is no merit in his appeal an casual manner had preferred this application only with an intention to harass the respondents. Further if the application is allowed the respondents will be put to irreparable lose and injustice and on the other hand if the application is rejected the applicant will not lose or



hardship. Hence, they have prayed to reject the application with exemplary cost.

5. Heard both sides and perused material on record.

6. The following points arise for my determination:

(1) *Whether the application is deserves to be allowed?*

(2) *What order ?*

7. My findings on the 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 present appeal preferred by the Appellants/defendants before the Trial Court. Trial Court the plaintiffs have filed the suit for specific performance of contract in respect of the suit schedule property against defendants. On 30.11.2021 in OS.No.270/2014 the Trial Court has decreed the suit and that they have challenged the above judgment and decree in this appeal. The



respondents have filed detail objections to the said application.

9. The applicant/appellant No.1 has filed an affidavit in lieu of his enquiry on IA.No.3, wherein he has stated in respect of suffering from illness and was obtaining treatment. In this regard, the appellant/applicant No.1 has not produced any supporting document.

10. Be that as it may. *As per Section 5 of Limitation Act., the delay can be condoned, if the applicants show sufficient cause for delay in filing the petition.* Here, the petitioners have given ill-health of the applicant No.1 as the reason for non prosecution of the suit and for the delay in filing the petition. The contention of the appellant may be true, he might not have kept good health as contended by the appellant No.1. Apart from that, the respondent No.1 filed detailed objection to the above application. The contention of the appellants seems to be genuine. Such being the case,



to provide an opportunity to the appellants to proceed with the case, the delay of 15 days in preferring the petition, if opportunity is not given then the appellants will be put more hardship. Hence, delay of 15 days in preferring the petition is condoned on costs to meet the ends of justice. Therefore, I answered Point No.1 in the Affirmative.

11. **Point No.2** : Based on findings in Point No.1, this Court proceeds to pass the following:

ORDER

IA.No.3 filed by the
applicant/appellant No.1 Under Section 5
of Limitation Act is allowed with costs of
Rs.2,000/- and out of the cost amount
Rs.1,000/- shall be paid to DLSA,
Ramanagara.

(Dictated to the Stenographer directly on computer, corrected by me and then pronounced in the Open Court on this the 05th day of November 2024).

(Sri.Mahesh.B.T)
1st Addl. Senior Civil Judge & JMFC.,
Ramanagara.