

**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE,**  
**RAMANAGARA**

**:PRESENT:**

**Smt. K.Srividya, B.A.L., LL.M.,**  
**Addl. Senior Civil Judge,**  
**Ramanagara.**

**Mis. Petition No.3/2013**

**DATED : THIS THE 8<sup>th</sup> DAY OF NOVEMBER 2016**

- Petitioners/  
Applicants** : 1. Smt.A.S.Lakshamma,  
W/o.late C.Paramashivaiah, 63 years,
2. Madhusudhan @ Madhu,  
S/o.late C.Paramashivaiah, 43 years,
3. P.Malathi,  
D/o.late C.Paramashivaiah, 40 years,  
R/at No.74/A, Sir.M.V.Layout,  
Ullal Main Road, Near Ashrama Circle,  
Bangalore – 56.
4. P.Mohan Kumar,  
S/o.late C.Paramashivaiah, 36 years,

Petitioners No.1, 2 & 4 are  
Agriculturists,  
R/at Bilagumba Village, Kasaba Hobli,  
Ramanagara Taluk & District.

**(By Sri. K.G.S., Advocate)**

**- V/s -**

- Respondents** : 1. C.Chikegowda @ Thammaiah,  
S/o.late C.Chikkegowda, 79 years,  
2. B.C.Raju, S/o.C.Chikkegowda @  
Thammaiah, 44 years,

Both are R/at Bilagunba Village,  
Kasaba Hobli,  
Ramanagara Taluk & District.

**(By Sri.M.L.V., Advo.)**

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**ORDERS ON I.A.I**

I.A.I application is filed by the petitioners U/s.5 r/w Article 123 of the Limitation Act to condone the delay of 4 years in filing the petition and to grant such other reliefs. It is accompanied by affidavit. Objection is filed to the said application.

2. In the affidavit accompanying the application, the petitioners state that, they had borrowed a sum of Rs.8,00,000/- from the respondents to meet their family necessity and also to discharge the loan for the purpose of establishing brick industry. The respondents being the neighbour knew them for many years and agreed to extend

the help by lending a sum of Rs.8,00,000/- as hand loan and put to terms that the amount has to be repaid along with interest at the rate of 2% p.a. which comes to Rs.16,000/- per month. Further state, since they were unable to pay the said amount of Rs.16,000/- they came to understanding that the petitioners shall pay the entire principle and interest after 2 years in lumpsum which comes to Rs.8,00,000/- as principle and Rs.4,00,000/- towards interest at the rate of 2% p.m. The total amount was supposed to be paid by the petitioner after the expiry of 24 months was Rs.12,00,000/-.

Further submit, the respondents insisted them to execute an agreement and the same should be registered before the Sub-Registrar, Ramanagara. With faith and confidence they executed an agreement without looking into the contents of the documents. Further state, the document was registered before the Sub-Registrar and made the petitioners to admit that they received the amount. The petitioners were under the impression that the agreement was entered into for receipt of Rs.8,00,000/- and they admitted before the Sub-Registrar that they received the said

amount. No amount was paid by the respondents. Except the Rs.8,00,000/- paid at the time of execution of the agreement.

Further state, after completion of 24 months when they approached the respondents with the money along with interest to discharge the loan borrowed from the respondent, the respondents avoided to receive the same and informed them that they would receive the said amount as and when they require and requested the petitioners to keep the same with them.

Further state, in the 2<sup>nd</sup> week of September 2006 the respondent send a legal notice to the petitioners and they immediately approached the counsel Sri.B.K.Dhananjaya and handed over the same to him. The said counsel who knew the transaction assured that he would reply to the same. The respondents without the knowledge of the petitioners filed a suit for Specific Performance before the Hon'ble Court and the Court issued emergent notice, returnable by 07.02.2007.

Immediately, after receipt of the Court notice, the petitioners approached their counsel Sri.B.K.Dhananjaya and handed over all the papers to him. The said counsel was their

family advocate and known to both the parties. Advocate took the vakalath and informed them that he would intimate the next date of hearing. On all dates of hearing they were informed that, they need not have go to the Court and they were told to be present in the Advocates Chamber. Accordingly, they never attended the Court at any point of time and at all time they used to meet the advocate in his chamber and take the date of hearing. Their advocate kept them in total darkness and neither attended the case nor informed about the progress of the case at any point of time.

Further contend, the advocate was appearing on their behalf had taken two vakalaths at the time when they received summons from the Court. They were not informed of any of the proceeding neither original nor execution. They did not suspect the conduct at any point of time and believed the words of their counsel. On that belief, they did not verify the stage and proceeding of the case. Ultimately, during the 2<sup>nd</sup> week of December 2012 and hence, from the date of knowledge of the above said proceeding they have filed this Miscellaneous Petition.

Further state, the petitioners are agriculturist by profession and uneducated and have no knowledge about the legal proceedings. Their advocate has not only betrayed their interest but, also made them to loose valuable lands which are more than one crore.

Hence, there is delay in filing the Mis.Petition. However, there is no delay from the date of knowledge of the decree. Further state, they have good defence against the respondents. Hence, prays for condoning the delay in filing the petition and permit them to adjudicate the matter.

3. In the objection, apart from usual denial of the averments mentioned in the affidavit accompanying the application, the respondents submit that, the petitioners have not come to the Court with clean hands. The respondents contend that, the petitioners have appeared through their counsel in the original suit but, they did not file any written statement. Similarly, they also appeared through their counsel in the execution proceeding. But, did not file any objections. Thus, they were aware of the original suit and the execution proceeding. They have slept over the matter all

these years and now, has come with this frivolous petition only to drag the respondents into unrighteous and to harass them. If the application is allowed, it would great loss and injury to the respondents which cannot be compensated in terms of money. Hence, prays for dismissal of the application and heavy cost.

4. Based on the above petition averments, following points arise for my determination:

(1) *Whether the 4 years delay in filing the petition has to be condoned ?*

(2) *What order ?*

5. The petitioners in order to prove their case, the 4<sup>th</sup> petitioner examined himself as PW1 and got marked Ex.P1 to Ex.P33 documents. On the other hand, the respondent No.1 examined himself as RW1 and got marked Ex.R1 to Ex.R12.

6. Heard the arguments of the petitioners counsel Sri.K.G.S. and counsel for respondents Sri.M.L.V.

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 :** Since, the factual aspect has been discussed at the inception of this order. Hence, to avoid repetition it is not narrated hereunder.

9. The petitioner counsel argued that, due to fault of the counsel, the petitioners could not contest the suit. Presence of parties not stated in order sheet. Complaint is lodged to Bar Council against the counsel who initially represented the petitioner. Hence, delay of 4 years is to be condoned. The counsel referred to the following decisions.

- (1) 2001(6) SCC 176 (*M.K.Prasad -V/s- P.Arumugam*)
- (2) 2005(10) SCC 292 (*Varadaraja Perumal Temple -V/s- Pattabiraman and another*)
- (3) 2012(5) SCC 157 (*Maniben Devraj Shah -V/s- Municipal Corporation of Brihan*)

10. Perused the principles laid down in above cited cases, wherein, the Hon'ble Apex Court has held that, in construing Section 5 of the Limitation Act, the Court has to keep in mind that discretion in the section has to be exercised to advance substantial justice. The Court has discretion to condone or

refuse to condone the delay as is evidence from the words “may be admitted” used in the section. It has also been held that, while deciding the application the extent of the property involved and the stake of the parties has to be kept in mind and the inconvenience cause to the respondent can be compensated by awarding cost.

11. Per contra, the counsel for respondents argued that, in the original suit the petitioner was represented by counsel. I.A. was filed seeking time to file written statement. In the execution petition, the petitioners have appeared through counsel. On 23.08.2012 sale deed was registered through Court. On 06.12.2012 possession received in execution and Mahazar drawn. Now, all documents are in the name of respondent.

12. Petitioners failed to establish fraud committed on them. Ex.P3 establishes counsel for defendants/petitioners was diligent in conducting the case. Petitioners themselves were not diligent. PW1 is educated person and actively participates in politics has worldly knowledge. Hence, the allegation of petitioners cannot be accepted. Further, it is the duty of

party to give necessary instructions to lawyer in order to file written statement. Further argued, said false allegation shows that advocates profession is at stake. Can a lawyer go to client's house to get instructions to file written statement. Hence, the petitioners allegation against counsel is unbelievable. No mercy to be shown to petitioners. By contending so, prayed for rejection of application with heavy costs. The counsel referred to the principles cited in the *AIR MANUAL CIVIL AND CRIMINAL 6<sup>TH</sup> EDITION VOLUME – 5*. Perused the said citations. The said citations are with regard to determining the petition filed under Order 9 Rule 13 of CPC to set aside ex-parte order and decree. With due respect to the counsel the said citations is not applicable at this context while determining delay condonation application filed under Section 5 of Limitation Act.

13. Now, the Court has to consider whether the petitioners satisfies this Court they had sufficient cause for not preferring the petition within limitation period. The petitioners in the main petition seeks the relief under Order 9 Rule 13 r/w Sec.151 of CPC to set aside the ex-parte

judgment and decree in OS 676/2006 and consequential orders in Ex.No.98/2009 and to restore the original suit on its file.

14. So far as limitation period to set aside ex-parte judgment and decree is concerned, as per Article 123 of Limitation Act, 1963 to set aside a decree passed ex-parte or to rehear an appeal decreed or heard ex-parte, the limitation period is 30 days and the time begins to run from the date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.

15. The said provision lays down 30 days time to file petition to set aside ex-parte decree and if summons duly served then, the time begins to run from the date of the decree.

16. The petitioners contend, in the petition and present application that they came to know of the ex-parte judgment only in 2<sup>nd</sup> week of December 2012 after obtaining certified copies from the Hon'ble Court. Hence, they contend there is no delay from the date of knowledge of the decree. Further,

the petitioners have taken the contention that the advocate who represented them in original suit and execution petition, has kept them in darkness and by colluding with respondent made the respondents to obtain ex-parte decree.

17. Said aspect whether established by petitioners has to be looked into. 4<sup>th</sup> petitioner has got examined himself as PW1. He has reiterated the averments mentioned in the application in his chief examination by way of affidavit and got marked Ex.P1 to Ex.P33. PW1 in his cross-examination admits he has studied upto S.S.L.C. and he is actively involved in politics and was also President of Belagumba Grama Panchayath. He also admits the same counsel who represented him before Trial Court also represented him in a criminal case and said criminal case ended in compromise. PW1 also admits said counsel belonged to his village and he frequently visits the village. He also admits the said counsel is his far-off relative. He has also deposed the counsel used to intimate the date of hearing over the phone. He has deposed that, he came to know that his counsel is not proper when Court Ameen had come to the spot to take possession of

property. When a question was put to him why he had not resisted the execution of execution petition, he has deposed that he filed the present petition. PW1 has also deposed his previous counsel took signature of them for 2-3 vakalaths and they were asked to be present in chamber. He has also deposed he had no knowledge that written statement had to be filed before the Court. He denies that, they had entered into sale agreement with the respondents. He deposes it is not sale agreement but, an agreement which is taken as security for lending loan.

18. The 1<sup>st</sup> respondent has chief examined himself as DW1 by way of affidavit and got marked Ex.R1 to Ex.R12. RW1 in his cross-examination has denied the suggestion that, he has colluded with the counsel and obtained ex-parte decree. When a question was put to him by the counsel that, **if the petition is allowed whether he would suffer injury for which he has deposed that it is left to the Court to re-open the case if permitted under law.**

19. So far as the allegation of the petitioners against the previous counsel, they have produced Ex.P30 to Ex.P33 to show that they have lodged the complaint against their previous counsel before the Karnataka State Bar Council. For which the said counsel has filed his objection and the proceedings have commenced. If the complaint had not been lodged by the petitioners before the Bar Council then, the reason assigned by the petitioners for not filing the written statement could have been disbelieved. However, the petitioners having produced the documents to show they have lodged a complaint against the previous counsel this Court views that, they have sufficient reason as contended by them for not filing written statement before the Trial Court. Hence, the petitioners have established satisfactory grounds for not contesting the case before the Trial Court. Further, RW1 himself in his cross-examination has deposed if the law permits the case could be re-opened. This establishes no hardship would be caused to respondents if the application is allowed. Further this Court views that, to advance substantial justice to the parties 4 years delay in filing the petition could be condoned by awarding cost.

20. *However, it is to be noted that, this Court has no authority to determine whether the allegation made by the petitioners against the previous counsel is true or not. As the said aspect is out of the purview of this Court. Hence, based on said reasoning, **Point No.1 is answered in the Affirmative.***

**21. Point No.2:** Based on the findings given in point No. 1, proceed to pass the following:

**ORDER**

The application filed by the petitioners U/s.5 r/w Article 123 of the Limitation Act is hereby allowed.

The delay in filing the petition is hereby condoned on cost of Rs.2,500/-.

(Dictated to the Stenographer in part and dictated directly on the computer and computerized by her, corrected, signed and then pronounced by me in the Open Court on this the 8<sup>th</sup> day of November, 2016)

**(K. SRIVIDYA)**  
**Addl. Senior Civil Judge,**  
**Ramanagara.**

**ANNEXURE**

**1. List of witnesses examined on behalf of the petitioners:**

PW.1 : P.Mohan Kumar

**2. List of documents marked on behalf of the petitioners:**

- Ex.P.1 : Certified copy of Judgment in OS 676/06  
 Ex.P.2 : Certified copy of Decree in OS 676/06  
 Ex.P.3 : Certified copy of Order Sheet in OS 676/06  
 Ex.P.4 : Certified copy of Plaint in OS 676/06  
 Ex.P.5 & 6 : Certified copies of statements  
 Ex.P.7 : Certified copy of Agreement  
 Ex.P.8 & 9 : RTC Extracts  
 Ex.P.10 : Legal Notice  
 Ex.P.10(a) : Postal Acknowledgements  
 Ex.P.11 : Legal Notice  
 Ex.P.11(a) : Cover  
 Ex.P.11(b) : Certified copies of Postal Receipts  
 Ex.P.12 : Certified copy of Execution 98/09  
 Ex.P.13 : Certified copy of Order Sheet in Ex.98/09  
 Ex.P.14 : Certified copy of Sale Deed  
 Ex.P.15 : ಋಣಭಾರ ಪತ್ರದ ದೃಢೀಕೃತ ನಕಲು  
 Ex.P.16 : Certified copy of Mutation Extract  
 Ex.P.17 to 29 : RTC Extracts  
 Ex.P.30 : ಬಾರ್ ಕೌನ್ಸಿಲ್‌ಗೆ ಕೊಟ್ಟ ದೂರಿನ ದೃಢೀಕೃತ ಪ್ರತಿ  
 Ex.P.31 : Certified copy of Objection  
 Ex.P.32 : Certified copy of Order Sheet (Bar Council)  
 Ex.P.33 : Endorsement

**3. List of witnesses examined on behalf of the respondents:**

RW.1 : C.Chikkegowda @ Thammaiah

**4. List of documents marked on behalf of the respondents:**

- Ex.R.1 : Certified copy of Judgment in OS 676/06  
Ex.R.2 : Certified copy of Decree in OS 676/06  
Ex.R.3 : Certified copy of Order Sheet in OS 676/06  
Ex.R.4 : Certified copy of Application in Ex.98/09  
Ex.R.5 : Certified copy of Order Sheet in Ex.98/09  
Ex.R.6 : Certified copy of Sale Deed  
Ex.R.7 : Certified copy of Delivery Warrant  
Ex.R.8 : ಸ್ವಾಧೀನ ರಶೀದಿಯ ದೃಢೀಕೃತ ನಕಲು  
Ex.R.9 : Certified copy of Spot Mahazar  
Ex.R.10 & 11 : RTC Extracts  
Ex.R.12 : Mutation Register Extract

**Addl. Senior Civil Judge,  
Ramanagara.**