

IN THE COURT OF THE ADDITIONAL. SENIOR CIVIL JUDGE
& J.M.F.C., AT: MAGADI

Present:

Sri.Hanumanth Satwik., LL.M,
Addl. Sr. Civil Judge & JMFC., Magadi

Dated : this the 19th day of October 2020

R.A.No.158/2014

Appellants/ : 1 Smt. Hanumakka,
Defenants W/o. late Kunni Gangaiah,
Aged about 65 years,
R/at Nethenahally,
Kasaba Hobli, Magadi Taluk.

2 Sri. Boregowda,
S/o Thammaiah,
Aged about 65 years,
R/at Nethenahally,
Kasaba Hobli, Magadi Taluk.

{ Appellants represented By **Sri. R.K.**, Advocate }

-- V/s --

Respondents/ : 1 Sri. N.M.Gangaiah,
Plaintiffs S/o Masthigowda,
Aged about 72 years,
R/at Nethenahally,
Kasaba Hobli, Magadi Taluk.

2 Sri. Gangalingaiah,
S/o Chikkagangaiah,
Aged about 62 years,
R/at Nethenahally,
Kasaba Hobli, Magadi Taluk.

3 Sri. Nagaiah,
S/o Kalaiah,
Aged about 45 years,
R/at Nethenahally,
Kasaba Hobli, Magadi Taluk.

{ Respondent No.1 represented by **Sri. A.S.S.**, Advocate }
{ Respondent No.2 & 3 Ex-Parte }

ORDER ON IA

In the present appeal the appellants assail the judgment and decree passed by Hon'ble court of Prl. Civil Judge & JMFC, Magadi in O.S.No.88/1992 dated:12-08-2011.

2. The present application has been filed by the appellants to condone the delay of 198 days in filing the present appeal. Appellant no.1 in her affidavit submits that she and appellant no.2 were under the impression that respondent no.3 would prefer appeal against the judgment and decree. Subsequently, she came to know that respondent no.2 and 3 did not prefer appeal. Thereafter, they obtained the certified copies of the judgment and decree and presented the present appeal. In this circumstances the appellants pray as above.

3. Respondent no.1 did not file objections to the application.

4. Heard both the counsel.

5. Considering the contentions of both counsel, following points arise for my consideration.

1. Whether the delay caused in preferring the appeal bearing R.A.No.158/2014 deserves to be condone?

2. What order?

6. My findings for the above points are as under.

Point no.1 : In the affirmative

Point no.2 : As per final order
for the following;

REASONS

7. **Point No.1:-** It is the case of the appellants that they were under the impression that respondent no.3 would prefer appeal against the judgment and decree. Subsequently, they came to know that respondent no.2 and 3 did not prefer appeal. Thereafter, they obtained the certified copies of judgment and decree and presented this appeal. There is a delay of 198 days in filing the present appeal.

8. In the case at hand it is not in dispute that there is a delay of 198 days in filing the appeal by the appellants. So also, the

respondent did not file any objections to the application. As such, the application averments remained undisputed and uncontroverted by the respondent. Even otherwise, if the reasons given by the appellants are independently evaluated, it can be said that probabaly on the impression that respondent no.3 would prefer appeal, the appellants might have kept quite.

9. Further, what exactly is to be the approach in the matter of condonation of delay has been considered by the Hon'ble Supreme court of India in the decision between Collector Land Acquisition V/s Mst. Katiji cited in (1987) 2 SCC 107, wherein the Hon'ble Court laid down 6 broad guidelines, specifically holding that there should not be a pendantic approach in the matter of delay and delay should be liberly construed, more particularly when there is a merit in the case. Hon'ble Court held thus;

1. **“Ordinarily a litigant does not stand to benefit by lodging an appeal late.”**
2. **“Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As**

against this when delay is con- doned the highest that can happen is that a cause would be decided on merits after hearing the parties.”

3. **"Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.”**
4. **“When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.”**
5. **“There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.”**
6. **“It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so”.**

In the case at hand undisputedly there is a delay of 198 days in preferring the present appeal. Further, such a delay cannot be said to be in-ordinate. In this circumstances, having regard to the reasons given by the appellants for dealy in preferring the appeal and in view of the law laid down by the Hon'bel Supreme Court of India, I am of the view that there is a sufficient cause for condoning the delay of 198 days in preferring the present appeal.

10. In the case at hand the reasons furnished by the appellants for condoning the delay for preferring the appeal shows that there is a sufficient cause made out by the appellants for condoning the delay. Consequently, considering the application and facts and circumstances of the case and the number of days of delay in preferring the present appeal, I am of the view that the delay caused in preferring the appeal deserves to be condone. Accoridingly, point no.1 is answered in the affiramtive.

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

ORDER

IA filed U/sec.5 of Limitation Act filed by appellants is hereby allowed on cost of Rs.300/-.

The delay of 198 days caused in preferring the appeal stands condoned.

(Dictated to the Stenographer, typed by him corrected by me and then pronounced in the open court on this the **19th day of October, 2020.**)

(Hanumanth Satwik)

Addl. Sr. Civil Judge & JMFC.,
Magadi.