



**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & JMFC,
GUBBI.**

PRESENT

SMT. POORNIMA K. YADAV, B.A. LL.B., LL.M.,

Addl. Sr. Civil Judge & JMFC, Gubbi.

Dated on this the 5th day of March, 2026

RA NO. 38/2025

Appellant/s : Venkateshaiah dead by LR.,

(a) Smt. Venkateshaiah,
W/o Late venkateshaiah,
Aged about 55 years,
R/at Bilikalalya Village,
Mookanahalli Patna {ost,
Kasaba Hobli,
Gubbi Taluk.

(Plaintiff in OS No. 315/2017)

(By Sri S.R., Adv.)

Vs.

Respondent/s: 1. Guruvaiah S/o Late Dasabovi

Dead by his LRs

1(a). Latha
W/o Sadananda,
D/o Late Guruvaiah,
Aged about 29 years,
R/at Kalasagunte,
Thovinakere Post,
Kora Hobli,
Tumakuru Taluk.

2. Lokesh dead by L.R.s



2(a) Ammayamma
W/o Late Lokesh,
Aged about 60 years,

2(b) Krishnamurthy
S/o Late Lokesh,
Aged about 40 years,

2(c) Chandrashekhar
S/o Late Lokesh,
Aged about 37 years,

R2(a) to (c) are
R/at Bilikalalya Village,
Mookanahalli atna ost,
Kasaba Hobli,
Gubbi Taluk.

3. Thimmakka
D/o Late dasabovi,
W/o Late Gangadharaiah,
Aged about 48 years,
R/at Muthugadahalli,
Thondebavi Hobli,
Gowribidanur Taluk,
Chikkaballaura District.

(Defendants in OS NO. 315/2017)

(R1(a), 2 (a) to (c) and R3 Absent)

PARTIES TO I.A.NO.I

Applicant : Venkateshaiah, by L.R.
Siddagangamma

(Appellant)

Vs.



Opponent : Guruvaiah by L.R.
Latha and others

(Respondents)

Provision under the Application	Under Section 5 of Limitation Act
Application Relief sought for	To condone the delay of 354 days in filing this appeal
The date of the application is filed Interlocutory Application Number	22.07.2025
Interlocutory Application Number	I
Date of objection filed by the Respondent	Not filed
Date of order passed	05.03.2026

Sd/-

(POORNIMA K. YADAV)
Addl. Senior Civil Judge &
JMFC, Gubbi.

:ORDERS ON I.A.NO.I:

The appellant through his counsel filed this application under Section 5 of Limitation Act seeking to condone the delay of 354 days in filing this appeal.

- 2.** The application is accompanied with the affidavit of the appellant, wherein it is stated that the previous counsel was



coming from Tumakuru and he had told that he will intimate about his presence and result of the case before the trial Court. But he did not inform about the disposal of the case. When the appellant tried to meet his counsel, the phone number of the counsel was not available as it was changed. The appellant engaged the present counsel and after verification in the court, it is noticed that the case is disposed. Thereafter the present appeal is filed. The delay in filing the appeal is not intentional and it is bonafide. Hence, sought to allow the application.

3. The respondent No. 1(a) and 2(a) to (c), respondent No.3 have not appeared and they are placed Absent.
4. The appellant got examined himself as PW1 but did not produce any documentary evidence.
5. Heard the counsel for appellant.
6. The counsel for the appellant relied on the judgments of Hon'ble Supreme Court of India as under:
 1. **AIR 1987 SC 1353 between COLLECTOR LAND ACQUISITION, ANANTH NAG AND ANOTHER V/s MST KATIJI AND OTHERS**, wherein it is held that,



- “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 condoned 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”

2. 2025 INSC 382 between INDER SINGH V.s. STATE OF MADYA PRADESH, wherein it is held that,

“17. No doubt, Ramchandra Shankar Deodhar (supra) relates to a writ petition, but the statement of law laid down is clear. Sheo Raj Singh (supra) has also considered the impersonal nature of the functioning of the State, taking note of what was observed in State of Manipur v Kotin Lamkang, (2019) 10 SCC 408. In A B Govardhan v P Ragothaman, (2024) 10 SCC 613, the Court considered as under:

’37. In Collector (LA) v. Katiji, (1987) 2 SCC 107], the Court noted that it had been adopting a justifiably liberal approach in condoning delay and that “justice on merits” is to be preferred as against what “scuttles a decision on merits”. Albeit,



while reversing an order of the High Court therein condoning delay, principles to guide the consideration of an application for condonation of delay were culled out in Esha Bhattacharjee v. Raghunathpur Nafar Academy [Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595]. One of the factors taken note of therein was that substantial justice is paramount [Para 21.3 of Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649: (2014) 1 SCC (Civ) 713: (2014) 4 SCC (Cri) 450: (2014) 2 SCC (L&S) 595].

38. *In N.L. Abhyankar v. Union of India [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah LJ 503], a Division Bench of the Bombay High Court at Nagpur considered, though in the context of delay vis-à-vis Article 226 of the Constitution, the decision in Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur [Dehri Rohtas Light Railway Co. Ltd. v. District Board, Bhojpur, (1992) 2*



SCC 598], and held that (N.L. Abhyankar case [N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah LJ 503], SCC OnLine Bom para 22)

“22. ... The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such, but the test is whether by reason of delay there is such negligence on the part of the petitioner, so as to infer that he has given up his claim or whether before the petitioner has moved the writ court, the rights of the third parties have come into being which should not be allowed to be disturbed unless there is reasonable explanation for the delay.”

(emphasis supplied)

39. The Bombay High Court's eloquent statement of the correct position in law in N.L. Abhyankar v. Union of India, 1994 SCC OnLine Bom 574: (1995) 1 Mah LJ 503] found approval in Municipal Council, Ahmednagar v. Shah Hyder Beig



[Municipal Council, Ahmednagar v. Shah Hyder Beig, (2000) 2 SCC 48] and Mool Chandra v. Union of India [Mool Chandra v. Union of India, (2025) 1 SCC 625: 2024 SCC OnLine SC 1878].

40. In the wake of the above mentioned, taking a liberal approach subserving the cause of justice, we condone the delay and allow IA No. 16203 of 2019, subject to payment of costs of Rs 20,000 (Rupees twenty thousand) by the appellant to the respondent.”

3. AIR 1955 SC 897 between G. RAMEGOWA V/s SPECIAL ACQUISITION OFFICER, wherein it is held that,

“Therefore, in assessing what, in a particular case, constitutes ‘sufficient cause’ for purposes of Section 5 it might, perhaps, be some what unrealistic to exclude from the considerations that go into the judicial verdict, these factors which are peculiar to and characteristic of the functioning of the Government. Governmental decisions are proverbially slow encumbered, as they



are, by a considerable degree of procedural red-tape in the process of their making. A certain amount of latitude is, therefore, not impermissible. It is rightly said that those who bear responsibility of Government must have 'a little play at the joints'.

7. Upon hearing and based upon the materials available on record, the point that arise for my consideration is:

Whether the appellant has shown sufficient cause to condone the delay of 354 days in preferring this appeal ?

8. My finding to the above point is in the '**Affirmative**' for the following :

REASONS

9. Admittedly, this appeal is filed challenging the judgment and decree in OS No. 315/2017 passed by the Prl. Civil Judge and JMFC Gubbi on 29.07.2024. This application is filed seeking condonation of 354 days delay in preferring the appeal against the said Judgment dated 29.07.2024.
10. PW1 in his affidavit evidence reiterated the application



affidavit averments as such, I do not want to repeat the same.

The respondent have not contest the appel and objected the present application.

11. The appellant urged that due to not giving of information by his earlier counsel, he was not aware of the judgment of the trial Court.
12. Further, the judgments relied on by the counsel for appellant are aptly applicable to the case on hand as the delay caused in the filing of the appeal is due to non information of the case status before the trial court by the concerned advocate. There is no contradictory materials on record to show that the delay is caused due to the malafide of the appellant. Hence, it can be construed that due to bonafide reason there is delay in filing the appeal. In the said circumstances, this court is of the opinion that the delay in filing the appeal can be condoned by imposing costs. Accordingly, I proceed to pass the following:

ORDER

***I.A. No.1 filed by the
appellant under Section 5 of***



***Limitation Act is hereby allowed
with cost.***

***Delay of 354 days in filing
the appeal is condoned by
imposing cost of Rs. 2,000/-***

(Directly dictated to the stenographer on the computer,
printed through steno, corrected by me and then
pronounced in the open court on this the **5th day of
March, 2026**)

Sd/-
(POORNIMA. K. YADAV)
Addl. Sr. Civil Judge & JMFC,
Gubbi