



**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 24th day of March, 2026

RA NO. 37/2024

- Appellant/s** :1. Smt. Shivarajamma
W/o Rajashekaraiah,
Aged about 55 years,
2. Sri. Rajashekaraiah U.Y.
@ Rajanna U.Y.
S/o Late Yenjappa,
Aged about 61 years,

Both are R/at Uddehosakere
Village, Nittur Hobli,
Gubbi Taluk,
Tumakuru District.

(Plaintiffs in OS No. 67/2014)
(By Sri B.R.P., Adv.)

Vs.

- Respondent/s:** 1. The Chief Secretary,
Govt of Karnataka,
M.S. Building,
Ambedkar Veedi,
Bangalore- 560001.
2. The Deputy Commissioner,
Tumakuru District,
Tumakuru.



3. The Thasildar,
Taluk Office Gubbi,
Tumakur District.
4. Panchayath Development,
Muganayakanakote Village,
Panchayath, Nittur Hobli,
Gubbi Taluk,
Tumkur District.

(Defendants in OS NO. 67/2014)

(R1 to 3 by AGP)
(4 by Smt. PMP Adv.)

PARTIES TO I.A.NO.I

Applicant : Rajashekaraiah U.Y.
(Appellant No.2)

Vs.

Opponent : The Chief Secretary,
Govt of Karnataka, and others
(Respondents)

Provision under the Application	Under Section 5 of Limitation Act
Application Relief sought for	To condone the delay of 470 days in filing this appeal
The date of the application is filed Interlocutory Application Number	19.11.2024
Interlocutory Application Number	I
Date of objection filed by the Respondent	09.09.2025



Date of order passed	24.03.2026
----------------------	------------

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

:ORDERS ON I.A.NO.I:

The appellants through their counsel filed this application under Section 5 of Limitation Act seeking to condone the delay of 470 days in filing this appeal.

2. The application is accompanied with the affidavit of the appellant No.2, wherein it is stated that the appellants filed suit in OS No. 67/2014 seeking relief of declaration and permanent injunction with respect to suit schedule property. The said suit was dismissed on 28.07.2023 but the counsel informed about the dismissal Order during 1st week of August 2023 over telephone. Thereafter, the appellant No.2 instructed the counsel to apply for certified copy of the Judgment and same was applied on 02.08.2023. The appellant No. 2 is suffering from health



problem since July 2023 and he has non healing ulcer over the dorsum of the left foot for which he was under treatment at Sri Devi Hospital, Tumakuru as inpatient and he is still taking treatment as outpatient. As the appellant No. 2 was unable to walk, he could not contact his advocate and discuss about the case. When the advocate informed the appellant regarding filing of the appeal, there was delay of 470 days in filing the appeal and the reason for not filing of the appeal within time is bona-fide and unintentional. Hence, sought to allow the application.

- 3.** On the other hand AGP for respondent No. 1 to 3 filed objection and contended that the application is not maintainable and it is liable to be rejected. It is contended that the appellant has filed false affidavit without stating reasonable ground to file the appeal with in time. Hence, sought to reject the application.
- 4.** The appellant No. 2 got examined himself as PW1 and got marked documents at Ex P1. On the other hand the



respondent did not adduce any evidence.

5. Heard both the counsel for appellants and AGP for respondent No. 1 to 3.
6. 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 470 days in preferring this appeal?

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

REASONS

8. Admittedly, this appeal is filed challenging the judgment and decree in OS No. 67/2014 passed by the Prl. Civil Judge and JMFC, Gubbi on 28.07.2023. This application is filed seeking condonation of 470 days delay in preferring the appeal against the said Judgment dated 28.07.2023.
9. PW1 in his affidavit evidence reiterated the application affidavit averments as such, I do not want to repeat the



same.

- 10.** The appellant urged that due to his health issues, he could not file the appeal within time. PW1 produced Medical records at Ex P1 which discloses that the appellant No. 2 has taken treatment at Sridevi Institute of Medical Sciences and Research Hospital in between 22.11.2023 and 11.12.2023 as in-patient and in between 16.12.2023 and 29.06.2024 as out-patient.
- 11.** PW1 in his cross-examination denied that his advocate informed him about the dismissal of OS No. 67/2014 on 28.02.2023. When the AGP suggested PW1 that he got admitted at Sridevi Hospital on 22.11.2023 and got discharged from the said hospital on 11.12.2023 but preferred this appeal after lapse of 1 year, PW1 deposed that he had to visit the hospital every 2 days to get done bandage. He denied that intentionally the appeal is filed at a belated stage to grab the suit schedule property.
- 12.** The materials on record discloses that the appellant No. 2 and the appellant No.1 are husband and wife and they



had filed suit in Os No. 67/2014 seeking relief of declaration of their ownership and consequential relief of permanent injunction in respect of suit schedule property. The said suit after contest came to be dismissed vide judgment dated 28.07.2023 and decree was drawn on 10.08.2023. The appellant No.2 urged that due to his health issues, he could not contact his advocate within time and file the appeal.

- 13.** Ex P1 document discloses that the appellant No.2 i.e., the husband of appellant No.1 was under treatment for non healing ulcer over dorsum of left foot wherein the appellant No. 2 underwent split skin grafting and he was advice for graft care after discharge.
- 14.** Order 41 Rule 3A of CPC provides that when appeal is presented after expiry of the period of limitation, it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal with in such period.



- 15.** In the instant case when the affidavit evidence of PW1 is read with Ex P1, it is seen that the appellant satisfied the reason of not filing the present appeal within time on health grounds and treatment depicting the fact of sufficient cause. Hence, this court is of the opinion that the appellant has shown sufficient cause for not preferring the appeal within time. 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 on cost of Rs. 500/-.***

***Delay of 470 days in filing
the appeal is condoned.***

(Directly dictated to the stenographer on the computer, printed through steno, corrected by me and then pronounced in the open court on this the **24th day of March, 2026**)

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