

**ORDER ON IA NO.II**

The learned counsel for respondent/objector has filed IA No.II under section 5 of the Limitation Act for condonation of delay of 315 days in preferring cross objection.

02. The learned counsel for appellant has filed objection to the said application.

03. Heard learned respective counsels and perused the materials placed on record.

04. Challenging the Judgment and Decree passed in OS No.48/2019, the plaintiff has preferred this appeal. The notice on appeal was served to the respondent on 15-12-2023. From 15-12-2023 case was adjourned from time to time for argument till 30-08-2024.

05. On 30-08-2024 the learned counsel for appellant had addressed their argument. When the case was posted for respondent's argument, the respondent preferred cross objection. As per

Order 41, Rule 22 the cross objection/cross appeal has to be filed within one month from the date of service of notice on him or his pleader of notice of the day fixed for hearing the appeal. But as observed supra, the cross objection/appeal was filed after lapse of nearly 315 days from the date of service of notice on appeal memo.

06. It is submitted by the learned counsel for objector/respondent that he is residing away from Bhatkal Town and he is village rustic and that during the course of appeal they have learned that their claim is partly allowed as such he was advised by his counsel to prefer cross objection for rejection of their counter claim. Hence there is delay of 315 days in filing cross objection.

07. The learned counsel for respondent at this juncture has referred the judgment reported in **(1987) 2 SCC 107 between Collector, Land Acquisition, Anantnag and Another V/s Mst. Katiji and Others**, wherein it was observed that the liberal approach should be adopted while deciding delay condonation application. 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. "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. 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. 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. 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.

**08. ILR 2016 KARNATAKA 4463 between Rangappa and Others V/s Nagappa and Others.** In the said case there was delay of 380

days in filing the first appeal. The First Appellate Court has dismissed the appeal on the ground of delay. The Hon'ble High Court which is the Second Appellate Court has observed that "A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The rights of the parties should not be deprived in respect of immovable property only on techicality. When substantial justice and technical considerations are pitted against each other, only the substantial justice should prevail. The Legislature has conferred the power to condone delay by enacting Section 5 of the Limitation Act, 1963, in order to enable the Courts to do substantial justice to the parties by disposing of the matters on 'merits'. The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose for the existence of the institution of Court".

09. Coming to the case in hand, it is true that there is inordinate delay of 315 days in preferring cross objection. But the objector/respondent has assigned sufficient cause for not

preferring cross objection within time. It is stated by the respondent that the relief claimed in the suit by way of counter-claim was dismissed and he has preferred cross appeal challenging the order passed by the trial court rejecting his counter-claim.

10. As observed by the Hon'ble High Court and Supreme Court, the appeal should not be dismissed on technicalities of the delay in lodging the appeal when parties have assigned sufficient cause for delay in preferring the appeal. Hence to give an opportunity to the respondent to prove his case it is just to condone the delay of 315 days in preferring the cross objection. Hence IA No.II filed by the objector/respondent under Order 41, Rule 3A of CPC is allowed.

Sd/-

**JMFC,**  
**SENIOR CIVIL JUDGE AND**  
**BHATKAL**