

ORDER ON IA NO.I AND IV

The appellant has filed IA No.I under Order 41, Rule 3(A) of CPC read with section 5 of Limitation Act praying to condone the delay of 267 days in filing the appeal and IA No.IV under section 151 of CPC seeking permission to file better affidavit in support of IA No.I.

IA No.I has been supported with the affidavit of Chief-Officer Town Panchayat but the name of Chief-Officer has not mentioned in the affidavit. Hence IA No.IV is requesting to permit the appellant to file the better affidavit in support of IA No.I.

The counsel for the appellant has relied upon a decision of Hon'ble Supreme Court reported in **AIR 1967 SC 81 in between Dwara Naka Vs Income Tax Officer** wherein Hon'ble Supreme Court in para 20 it is held as here under:

20. If the affidavit was defective in any manner the High Court, instead of dismissing the petition in limine, should have given the

appellant a reasonable opportunity to file a better affidavit complying with the provisions of R. 1 of Ch. XXII of the Rules

As per the dictum of Hon'ble Supreme Court if an affidavit is defective in any manner instead of rejecting it an opportunity is required to be given to the party concerned to file the better affidavit complying with the requirement of law. In view of the dictum of Hon'ble Supreme Court merely because name and other details of person who sworn in the affidavit is not mentioned, straight away it cannot be rejected and it is just and necessary to permit the appellant to file the better affidavit. Hence without further discussion IA No.IV is required to be allowed by permitting the appellant to file better affidavit and the better affidavit is already filed and it can be taken into consideration.

So far as IA No.I is concerned the appellant has contended that the plaintiff has filed suit for damages before the trial court and it has partly decreed. The judgment was pronounced on 03-01-2024 and they submitted an application on 04-01-2024 and

collected the copy on 28-04-2024. After getting certified copies the Chief Officer has transferred and due to mistake and oversight he has not handed over the file in time. Thus there is a delay of 267 days in filing the appeal. Hence, they requested to condone the delay.

On the other hand the respondent has filed the objection and contended that the application is not maintainable under law or facts. There is an inordinate delay and it can not be condoned. The contents of the affidavit are totally false. Name of the person who sworn as not mentioned. When the respondent filed the execution petition the appellant has filed this appeal only to escape to pay damages and also to postpone the same. The appellants have intentionally not filed appeal in time. If this court allow the application the respondent could not enjoy the fruits of the decree and much injustice will be caused to him. Hence pray to dismiss the application.

Heard both side arguments.

Perused.

The plaintiff has filed the suit for damages due to negligence of defendant

Municipality. Suit partly decreed. Hence the defendant Town Panchayat Authorities have filed this appeal but they could not file the appeal in time and there is a delay of 267 days.

The Chief-Officer of the Town Panchayat has deposed in the affidavit due to transfer of the Chief-Officer and due to mistake and oversight he has not handed over the case papers. Thus there is a delay.

The counsel for the respondent has vehemently argued that delay cannot be condoned and they are intentionally not filed the appeal with an intention to avoid the payment of compensation. Further argued that appeal must have filed within limitation otherwise they have to show the sufficient cause. Since the appellants have not shown sufficient cause the delay cannot be condoned. Hence they requested to dismiss the IA as well as appeal.

In support of their arguments they have relied upon the decisions as here under:

01. AIR 1987 SC 1353 (A)

02. AIR 1991 Allahabad 229

03. 2025 SAR (Civ) 21
04. AIR 1976 Allahabad 159
05. 1956 Saurashtra 113
06. AIR 1934 Nagpur 160
07. AIR 1956 Andhra 64
08. AIR 1985 Patna 212
09. AIR 1987 Gujarat 205
10. 2024 SAR (Civ) 523

On the other hand the counsel for the appellants have submits the appellants are the Municipal authorities and they are doing public service with the public and in view of the transfer of Chief-Officer they unable to file the appeal in time. Hence they requested to allow the IA.

In support of their arguments they have relied upon the latest decision of Hon'ble Supreme Court reported in **2023 INSC 885 in between Sheo Raj Singh (D) through Lrs and Others V/s Union of India and Another**. Wherein the Hon'ble Supreme Court in para-37 it is held as here under:

37. Having bestowed serious consideration to the rival contentions, we feel that the High Court's decision to condone the delay on account of the first respondent's inability to present the appeal within

time, for the reasons assigned therein, does not suffer from any error warranting interference. As the aforementioned judgments have shown, such an exercise of discretion does, at times, call for a liberal and justice-oriented approach by the Courts, where certain leeway could be provided to the State. The hidden forces that are at work in preventing an appeal by the State being presented within the prescribed period of limitation so as not to allow a higher court to pronounce upon the legality and validity of an order of a lower court and thereby secure unholy gains, can hardly be ignored. Impediments in the working of the grand scheme of governmental functions have to be removed by taking a pragmatic view on balancing of the competing interests.

It is settled principle of law that while dealing with the application under section 5 of Limitation Act in condoning the delay the court must show the liberal approach. In catena of decisions of Hon'ble Supreme Court and Hon'ble High Court time and again held that merely because some delay in filing the appeals they shall not be dismissed too technically and reason assigned by the parties are required to be considered.

On careful verification of all the decisions cited by the counsel for the

respondent, no decisions are held that when there is a proper explanations or reasons it shall not be accepted and dismiss the application. In view of the transfer of the Chief-Officer who filed the appeal they could not file the appeal in time. Hence this court of the considered view that the reasons offered by the appellant is required to be accepted.

It is very significant to note here that Hon'ble Supreme Court in the latest pronouncement in Sheo Raj Singh Case was pleased to upheld the decision of Hon'ble High Court in condoning the delay of 479 days in filing the appeal by holding as stated supra. Here just there is a delay of 267 days and the reason assigned by the appellants satisfied this court to condone the delay. Hence this court did not found any grounds to dismiss the application. Hence I proceed to pass the following:

ORDER

IA No.I filed under Order 41, Rule 3(A) of CPC read with section 5 of Limitation Act is hereby allowed on cost Rs.3,000/-.

Delay of 267 days in filing the appeal is hereby condoned.

Call on for arguments on merits by 23-06-2025.

Sd/-
Senior Civil Judge &
JMFC,
Honnavar.