

KAUP020000102025



***BEFORE THE PRINCIPAL SENIOR CIVIL
JUDGE AND CJM., UDUPI.***

Present: Sri.M.Purushothama,
B.B.M, M.S.W., L.L.M.,P.G.D.H.R.M.

Prl. Senior Civil Judge & CJM., Udupi.

Dated this the 10th day of September, 2025

R.A.No. 1/2025

Appellants/Defendants : 1. The Deputy Director of Public
Instructions,Udupi,
Rajathadri,Manipal,
Udupi taluk and district.

2. The Deputy Commissioner,
Udupi district,
Rajathadri,
Manipal,Udupi taluk and district.

[Rep.By D.G.P.]

V/s

Respondent/Plaintiff: Patricia D'Souza,
Aged about 20 years,
D/o. Prakash D'Souza,
R/at. H. No.5-109/A,
Ithalbettu road,

Koteshwar,
Kundapur taluk,
Udupi district- 576 222.

[Rep.By P.P.J., Advocate]

In I.A. No.I

The DDPI Udupi and another : **Appellants**

Vs.

Patricia D'Souza : **Respondent**

Order on I.A. No.I

The appellants have filed an application under Section 5, of the Limitation Act, 1963 and Order XLI, Rule 3-A of CPC and prayed this court to allow the petition by condoning the delay of **864 days** in filing the appeal.

2. In the affidavit filed in support of the application, Ganapathi.K., DDPI Udupi has stated that after receipt of notice in Execution Petition No.233/2024 the same was sent to prosecution department. The matter was thereafter studied by the concerned in the office of the Director for Prosecution and Govt. Litigation at Bangalore. It is only thereafter the Government decided to file this appeal and vide its order dated 21-10-2024 authorized the District Government Pleader, Udupi to prefer the appeal. On 27-11-2024 he received copy of order to

District Government Pleader. Subsequently as per their instruction the certified copies of the Judgment & Decree and all other documents relating to case were applied on 28-11-2024 and received on 04-12-2024 passed by the Trial Court, which is under this appeal. The matter was thereafter studied by the concerned in the office of the Director for Prosecution and Govt. Litigation at Bangalore. This process naturally took some time to complete the procedures. The office of the District Government Pleader, Udupi has received the copy of the said order only on 28-11-2024. Thereafter the District Government Pleader has studied the brief, obtained necessary instructions from their department and filed the above appeal immediately on 04-01-2025. The delay caused in filing the appeal is not deliberate or intentional and there is a sufficient cause for not filing the appeal in time. The appellants are having valid defence to challenge the judgment and decree of the trial court.

3. On the other hand respondent has filed counter statement to the above application and submitted that the O.S. No.102/2021 was filed by her to declare that the she was born on 08-10-2003 and not on 08-10-2002, plaintiffs full and correct name as "Patricia Dsouza" and her father's full and correct name as Prakash D'Souza and not as Umesh Naik and for consequential relief of mandatory injunction to rectify the same in her school

records maintained by the appellants. The appellants in the above case has appeared through learned DGP in O.S. No.102/2021 but not filed written statement though sufficient opportunity were given. Hence, the said O.S. No.102/2021 on the file of II Additional Civil Judge, Udupi has been decreed on 21-07-2022. She has now completed her B.com degree and seeking a suitable job. After obtaining the decree and judgment in O.S. No. 102/2021 on the file of II Additional Civil Judge, Udupi, she had filed necessary application before all the defendants in said O.S. No.102/2021. It is the duty of the appellants to comply the decree & Judgment passed by II Additional Civil Judge and JMFC, Udupi in OS No.102/2021. However, the appellants instead of complying the decree of the court had filed this appeal by mentioning false reasons.

4. It is further submitted that the following persons were the parties in O.S. No.102/2021 on the file of II Additional Civil Judge and JMFC, Udupi, (1) The head Master, BMM Madhari Hirigya Prathamika Shale, Kokkarne, (2) The Head Master, Alded Higher Primary School, Brahmavara, (3) The Head Master, St. Joseph Higher Primary School, Kundapura, (4) The Head master, St. Josphe High School, Kundapura, (5) The Principal St. Mary's Composite Pre-University College, Kundapura (6) The Deputy Director of Public Instructions,

Udupi District, (7) The Secretary, Karnataka Secondary Education Board, Bangalore, (8) Department of Pre-University Education, Karnataka, and (9) The Deputy Commissioner, Udupi District. However, the appellants had made all the above persons in the present appeal or petitions. Hence, the petition relief whatever they sought is liable to be dismissed for non-joinder of necessary parties in the above appeal. Both the appellants were participated in O.S. No.102/2021 and they were very well aware about the decree and judgment passed in the above case. The first appellant has already given direction dated 18-05-2023 to the other defendant schools in the above O.S. No.102/2021 to rectify the mistakes crept as per the decree and judgment passed in O.S. No.102/2021 by the II Additional Civil Judge and JMFC, Udupi. petitioners/appellants have instructed the respondent to produce several documents in addition to the court order. The respondent has produced all the documents they sought and paid the prescribed fee as directed by them and now only to drag on the case this appeal has been filed with some ulterior motive. The averments made in the affidavit filed in support of I.A. are all false and baseless. If the stay is granted, the respondents will be put to greatest hardship and loss. Moreover, other defendants are already rectified mistakes crept in their respective school records on the basis of Decree and Judgment Passed by the I st Additional Civil Judge and

JMFC Udipi in O.S. No.102/2021 and several directions issued by the first appellant/first petitioner. Therefore, the appellants/petitioners have approached this court with most dirty hands by hiding real facts. The petitioners have not made out a case to grant stay. Moreover they have not made out any case to interfere with the decree and judgment of the Trial Court and they have not made out valid reasons to condone the delay in filing the present appeal. If the applications filed by the petitioners is dismissed no harm will be caused to the petitioners. On the other /respondent will caused to irreparable hardship and loss, which cannot be compensated in terms of money.

5. Heard arguments. Perused the entire materials available on record.

6. The points that would arise for my consideration are;

1. Whether the appellants shown sufficient grounds to allow the application filed u/s.5 of Limitation Act i.e. I.A. No.I?

2.What order?

7. My answer to the above points are as follows:

Point No.1: In the Affirmative

Point No.2: As per final order

for the following:

REASONS

8. The appellants have filed the appeal against the judgment and decree passed in OS 102/2021. In the appeal the appellant has filed application u/s.5 of Limitation Act. The appellant examined one Shobha Shetty as PW1 and produced 3 documents. On the other hand the respondent examined as RW1 and produced Ex.R16.

9. Admittedly, the appeal was filed belatedly after expiry of 864 days. The documents placed before the court by the respondent clearly establishes that she had informed the decree passed by the court.

10. It is stated in the application that after receipt of notice in execution petition the same was sent to prosecution department and thereafter the government has permitted to file the suit. On perusal of the proceedings of the government of government the Dy. Secretary to government department of school education and literacy head of legal cell authorized the government pleader on 21-10-2024 to prefer appeal against the judgment and decree dated 21-07-2022 in OS No.102/2021. It is well settled that the expression sufficient cause u/s.5 of the Limitation Act should receive a liberal construction so as to advance substantial justice, and ordinarily delay should be condoned when there is no gross negligence, deliberate in

action or lack of bonafides imputable to the applicant. The reasons assigned by the appellant though not free from some laps appeared to be bonafide or intentional delay. Denying an opportunity of hearing on merits would result in miscarriage of justice. Accordingly, the application is liable to be allowed in the interest of justice. The delay and inconvenience caused to the respondent can be met by imposing cost to the appellant that would meet the ends of justice. **Accordingly, I answered the point No.1 in the affirmative.**

11. Point No.2:- In view of the above discussion, I proceed to pass the following:

ORDER

The application by the appellants u/s.5 of Limitation Act is hereby allowed on cost of Rs.3,000/- payable to the respondent.

In the result the delay of 864 **days** in filing the appeal is condoned.

(Dictated to the Stenographer, computerized by her, corrected, signed and then pronounced by me in the open court on this the 10th day of September, 2025).

(M.Purushothama)

Prl. Sr. Civil Judge & ADDL.MACT,
Udupi.

