

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

Present: Smt.Hema Pastapur,B.A., LL.B.

Senior Civil Judge, and JMFC, Shahapur.

R.A.No.No.07/2022

Dated this 6th day of September-2025

Appellant/Plaintiff

Hassan Patel S/o Modin Patel,
Age 55 years, Occ. Agriculture,
R/o Bablad Tq. Wadagera, Dist.
Yadgir.

(By Sri. U.B.M., Advocate).

Versus.

**Respondents/
Defendants**

1. Shantappa S/o Ramanna Harijan
since deceased through his L.Rs,
2. Ningamma W/o Shantappa
Harijan, Age 60 years, Occ:
House Hold,
3. Dandamma W/o Marilinganna,
Age 40 years, Occ. House Hold,
4. Mallikarjun S/o Santappa
Harijan Age 35 years, Occ.
Agriculture.

All are R/o Village Bablad, Tq.
Wadagera, Dist. Yadgir.

**Defendant No.1 died Lrs on
record**

**(Defendant No.2 to 4 by Sri.
R.M.H., Advocate).**

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ORDER ON I.A.NO.II

1. That, the appellant has filed the application under Section 5 of Limitation Act, with a prayer to condone the delay of 1740 days, which was caused in preferring the present appeal.

2. That, the appellant in his affidavit has submitted that in the month of March-2017 he was suffering from paralytic attack and he lost his memory power and become a bed ridden and even also unable to walk or speak. That, appellant has further contended that, in the month of January-2022 he was started resuming his memory and still his under treatment and he came to know about the disposal of OS No.96/2012 by this Court dated 06-04-2017 and immediately he contacted his learned counsel and obtained the certified copies of judgment and decree passed in said suit and filed this appeal in that process the alleged delay was caused.

3. That, the respondents have submitted their detailed objections to the said application and have denied all the

contentions of the appellant and have prayed for rejecting the said application.

4. That, I have heard the arguments and perused the materials placed on record. That, the following points arise for My consideration and determination :-

1. Whether the appellant has made out the grounds for condoning the alleged delay ?

2. What order ?

5. That, the appellant to substantiate his aforesaid contentions has deposed himself as PW1 and got marked the documents at Exs.P1 to 3 and got examining one Shri Khan Patel S/o Sayyed Patel as PW2 and closed his side.

6. That, My answer to the aforesaid points are as under :-

Point In the **AFFIRMATIVE.**

No.1:-

Point **As per the final order**

No.2:-

for the following :-

R E A S O N S

7. Point No.1:- That, the appellant has specifically pleaded that, in the month of March-2017 he was suffering from paralytic attack and he lost his memory power and become a bed ridden and even also unable to walk or speak. That, appellant has further contended that, in the month of January-2022 he was started resuming his memory and still his under treatment and he came to know about the disposal of OS No.96/2012 by this Court dated 06-04-2017 and immediately he contacted his learned counsel and obtained the certified copies of judgment and decree passed in said suit and filed this appeal in that process the alleged delay was caused. That, the appellant in his chief affidavit as reiterated the said facts and got marked the documents at Exs.P1 to 3. Ex.p1 is the certified copy of Judgment passed in OS No.96/2012 by the Addl.Civil Judge & JMFC, Shahapur, dated 06-04-2017, Ex.P2 is the certified copy of Decree in Ex.P1 and Ex.P3 is the Medical and Fitness certificate issued by the District Hospital, Yadgir.

8. That, the PW2 has filed his chief affidavit supporting the case of the appellant.

9. That, the appellant has placed his reliance on following decisions;

1. AIR 2001 Supreme Court 2497

M.K. Prasad

V/s

P. Arumugam

Wherein it has held that, in any case in which a decree is passed ex parte the defendant can apply to the court by which the decree was passed for an order to set it aside and if he satisfies the court that he was prevented by an sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit. Such an application ca be filed within 30 days as provided under Art.123 of the Limitation Act. In case of delay, the defendant can avail of the benefit of Section 5 of the Limitation

Act and seeks its condonation by satisfying the Court regarding the existence of circumstances which prevented him from approaching the Court within the limitation prescribed by the Statute.

2. AIR 2001 Supreme Court 2582

Vedabai @ Vaijayantabai Baburao Patil

V/s

Shantara Baburao Patil & Ors.

Wherein it has held that, Limitation Act (36 of 1963). Section 5 condonation of delay Expression “sufficient cause”- Must be constructed liberally for advancing substantial justice. Delay of seven days in filing appeal- illness, through given as reason for delay acts showed that appeal was filed during illness- Conduct for appellant depicts anxiety to minimise delay rather than falsity of her case or mala fides- Delay in filing appeal condoned.

3. AIR 2002 Gujarat 81

Maniben Prabhatbhai Chauhan

V/s

Jagmohan Ramswarup Agarwal.

Wherein it has held that, Civil P.C. (5 of 1908), Order 22 Rule 9- Limitation Act (36 of 1963), Setting aside abatement -Condonation of delay- Trial Court Condoning delay of about 4 years and 9 months on condition to deposit Rs.2,500/- within period for 7 days- Petitioners failed to deposit same- Suit abated- Petitioners claiming that otherwise they have good case on merits and accordingly their legitimate right cannot be snatched away merely because of such technically – In view of such facts and in interest of justice, abatement order set aside order to deposit cost revived on condition that petitioners shall deposit a sum of Rs.5,000/- before District Legal Services Authority within period 7 days.

4. AIR 2002 Gujarath 82

Shriram Housing Finance Ltd.,

V/s

District Magistrate, Bhavnagar.

Wherein it has held that, It is specifically submitted that if only lawyer's aliment, even through known to the client is a ground for condonation of delay in any application for restoration of cases, dismissed in default, for such a long period then the argument of delay, negligence and laches of the petitioners available to the respondents would no more be available.

5. 2003(1) BOMCR 64

Leelabai Shionarayan Puturkar & Ors

V/s

Laxmibai Mangoji Sakharkar & Ors.

Wherein it has held that, It is well settled that the expression 'suffering cause' in person 5 of the Limitation Act must receive a liberal construction so as to advance substantial justice and generally delay in bringing appeals are required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay. In the case at hand, there seems to be no deliberate inaction on the part of the applicant No.1. The cause of delay appears to be due to her illness which is supported by

the medical certificate and, therefore, in my opinion, there being sufficient cause, the delay needs to be condoned in the interest of justice.

10. That, the respondents as stated above, have denied all the contentions of the appellant and have placed their reliance on following decision;

1. 2024 (2) KCCR 1539

Chennappa

V/s

Adamma and others.

Wherein it has held that, Limitation Act, 1963 Section -5 Each days delay to be explained – Non explanation- whether the delay could be condoned-No.

11. It is to be noted here that, the primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. That, the time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good

cause. It must be remembered that, in every case of delay, there can be some lapse on the part of the litigant concerned and that alone is not enough to turn down his plea and to shut the door against him. That, if the explanation does not smack malafides or it is not put forth as part of a dilatory strategy, the Court must show utmost consideration to the suitor.

12. That, in a particular case whether explanation furnished would constitute sufficient cause or not will depend upon the facts of each case. There cannot be a straitjacket formula for accepting or rejecting explanation furnished for the delay caused in taking steps. But, one thing is to clear that the Courts should not proceed with the tendency of finding fault with the cause shown and reject the petition by a slipshod order in over jubilation of disposal drive. That, acceptance of explanation furnished should be the rule, and refusal, an exception, more so, when no negligence or inaction or want of bonafides can be imputed to the defaulting party. That, the proof by sufficient cause is a condition precedent for exercise of the discretionary jurisdiction vested in the Court.

13. It is to be noted here that, the respondents in cross examination of PW1 has tried to elicit that, he is not suffering from paralytic attack and in cross examination of PW2 have also tried to elicit that PW1 is not suffering from paralytic attack but, all their efforts were went in vain.

14. It is to be note here that, as stated above the Courts should not proceed with the tendency of finding fault with the cause shown by the party and reject the petition by a slipshod order in over jublication of disposal drive. Hence, said application is deserves to be allowed. Hence, without much discussion, point No.1 is answered in the AFFIRMATIVE.

15. Point No.2:- That, as discussed on point No.1, I proceed to pass the following :-

O R D E R

That, the application filed by the appellant in I.A.No.II is hereby condoned on costs of Rs.300/-. That, the delay of 1740 days which was caused in preferring this appeal is hereby condoned.

(Directly dictated to the typist-copyist, typed by her, corrected by me and then pronounced in the open Court on this the 6th day of September, 2025).

(Hema Pastapur)
Sr. Civil Judge and JMFC,
Shahapur.

:- ANNEXURE :-

List of witnesses examined for appellants:-

PW.1: Shri. Jafar Sab S/o Abdul Aziz Attar

PW.2: Shri. Khan Patel S/o Syed Patel,

List of documents marked for appellant:-

Ex.P1: Certified copy of Judgment in OS No.96/2012.

Ex.P2: Certified copy of Decree in OS No.96/2012.

Ex.P3: Medical Certificates of PW1.

List of witnesses examined for the Respondents:-

-NIL-

List of documents marked for Respondents:-

-NIL-

(Hema Pastapur)
Sr. Civil Judge and JMFC,
Shahapur.