



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 252 OF 2026 (DEC)

BETWEEN:

SRI. R PARAMESHWARA
S/O LATE K. RAMAMURTHY,
AGED ABOUT 71 YEARS,
OCC: AGRICULTURIST,
R/O BOCHAPURA VILLAGE,
KASABA HOBLI,
HIRIYUR TALUK,
CHITRADURGA DISTRICT-577501.

...APPELLANT

(BY SRI. KANTHARAJAPPA M G., ADVOCATE)

AND:

R K GOWDA @ R KUNNEGOWDA
S/O LATE K. RAMAMURTHY,
AGED ABOUT 63 YEARS,
OCC. AGRICULTURIST,
R/O BOCHAPURA VILLAGE,
KASABA HOBLI,
HIRIYUR TALUK,
CHITRADURGA DISTRICT.577501.

...RESPONDENT

(BY SRI.R.SHARATHCHANDRA, ADVOCATE FOR C/R)

Digitally
signed by
KIRAN
KUMAR R
Location:
HIGH COURT
OF
KARNATAKA



THIS RSA FILED UNDER SEC.100 OF CPC., AGAINST THE ORDER DATED 22.01.2026 PASSED ON IA NO.I IN RA NO.31/2024 ON THE FILE OF SPL, 2ND ADDITIONAL DISTRICT AND SESSIONS JUDGE, CHITRADURGA., DISMISSING THE IA NO.1 FILED UNDER ORDER XLI RULE 3 R/W SEC.151 OF CPC. AND SEC.5 OF THE LIMITATION ACT., AND FILED AGAINST THE JUDGMENT AND DECREE 24.04.2024 PASSED IN OS NO.102/2022 ON THE FILE OF SENIOR CIVIL JUDGE AND JMFC, HIRIYUR, AT CHITRADURGA.

THIS APPEAL, COMING ON FOR ADMISSION, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

1. Though the matter is listed for admission, with the consent of both the parties, same is taken up for final hearing.
2. The appellant/defendant filed this appeal challenging the order dated 22.01.2026 passed on I.A. No.1 in R.A. No.31 of 2024 filed under Section 5 of the Limitation Act for condonation of delay of 5 months 10 days, on the file of the 2nd Addl. District and Sessions Judge, Chitradurga.
3. For convenience, the parties are referred to as per their ranking before the Trial Court. The appellant



was the defendant and the respondent was the plaintiff.

4. Brief facts leading rise to the filing of this appeal are as follows:
5. The plaintiff filed a suit in O.S. No.102 of 2022 for declaration of his title over 'A' schedule property and to direct the defendant to deliver vacant possession of "B" schedule property.
6. The Trial Court issued a summons and the defendant appeared through the counsel, however, he did not file a written statement.
7. The Trial Court, based on the pleadings of the parties, framed relevant points for consideration.
8. The case was posted for evidence of the plaintiff. The plaintiff examined himself as PW1 and got marked 8 documents as Exhibits P-1 to P-8.



9. The Trial Court, after recording the evidence and assessing the verbal and documentary evidence, answered the relevant points for consideration in the affirmative and accordingly, decreed the suit of the plaintiff with costs vide judgment dated 24.04.2024 and declared that the plaintiff is the absolute owner of "A" schedule property. Consequently, the defendant was directed to hand over the vacant possession of "B" schedule property within 90 days from the date of the judgment, failing which, the plaintiff was entitled to recover the possession of 'B' schedule property as per law.
10. The defendant aggrieved by the judgment and decree passed in O.S. No.102 of 2022 preferred an appeal in R.A. No.34 of 2024 and along with the appeal memo, he had filed an application for condonation of delay of 5 months 10 days in filing the appeal.



11. The plaintiff opposed the said application. The First Appellate Court, recorded the evidence of the parties on the application under Section 5 of the Limitation Act, 1963 and rejected the application and consequently, dismissed the appeal vide order dated 22.01.2026.
12. The defendant aggrieved by the order on I.A. No.1 filed this appeal.
13. Heard the arguments of the learned counsel for the defendant and the learned counsel for the plaintiff.
14. Learned counsel for the defendant submits that though the defendant approached the counsel but he did not file the written statement and contest the suit. The defendant was under ill-health and was under treatment for his eye surgery and also asthma. The defendant could not file the appeal within time on medical grounds. The grounds shown in the application constitute sufficient cause for not



filing an appeal in time. He also submitted that while considering an application under Section 5 of the Limitation Act, the court must take a liberal approach.

15. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others***, reported in ***AIR 1987 SC 1353*** [***"Mst.Katiji"***, for short].
16. He submits that the order passed by the First Appellate Court is contrary to the proposition laid down by the Hon'ble Apex Court in the case of ***Mst. Katiji (supra)***. Hence, on these grounds, prays to allow the appeal.
17. *Per contra*, learned counsel for the plaintiff submits that the appellant, though appeared through the learned counsel, however did not choose to file a written statement and he was negligent in



conducting the case before the Trial Court and also he failed to file the appeal within time. The First Appellate Court was justified in rejecting the application. Hence, prays to dismiss the appeal.

18. This Court admitted the appeal to consider the following substantial question of law:

"Whether the First Appellate Court was justified in rejecting I.A. No.1 filed under Section 5 of the Limitation Act, despite the appellant showing sufficient cause for not preferring the appeal well within time?"

Reg. Substantial Question of Law:

19. It is an undisputed fact that the plaintiff filed a suit for declaration and possession. The defendant appeared through the counsel however, did not choose to file a written statement. The plaintiff examined himself as PW1 and got marked eight documents and the defendant did not cross-examine



PW1. The Trial Court based on the evidence of PW1 and documents on record decreed the suit.

20. The defendant aggrieved by the judgment and decree passed by the Trial Court, preferred an appeal in R.A. No.34 of 2024 along with an application under Section 5 of the Limitation Act for condoning the delay of 5 months 10 days in filing the appeal.

21. The defendant has stated that due to his ill-health, he could not meet his counsel and give instructions to file a written statement and further, the learned counsel appearing for the defendant has not participated in the proceedings. Further, as per the statement given in the affidavit, due to his ill-health, the defendant could not give instructions to his counsel to file an appeal within time. Thus, the defendant has shown a sufficient cause for not preferring an appeal within time on medical grounds.



22. The First Appellate Court could have allowed the application filed under Section 5 of the Limitation Act. On the contrary, it rejected the application.
23. The Hon'ble Supreme Court, in the case of ***Mst.Katiji (supra)*** held that the Courts should adopt a liberal approach while considering an application under Section 5 of the Limitation Act. In paragraph 3 of the judgment, the Apex Court has held as under:

"3. ...The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of 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 Courts. It is common knowledge that this Court has been



making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy....”

24. Considering the proposition laid down by the Hon'ble Apex Court in the case of ***Mst.Khatiji***, the order passed by the First Appellate Court is arbitrary and erroneous. Hence, in view of the above discussion, I answer the substantial question of law in the ***negative***.

25. Accordingly, I proceed to pass the following order:

ORDER

- (i) The regular second appeal is ***allowed***.
- (ii) The order dated 22.01.2006 passed on I.A. No.1 in R.A. No.31 of 2024 by the learned Special II Additional District and Sessions Judge, Chitradurga is *set aside*.
- (iii) Accordingly, I.A. No.1 is ***allowed*** and the delay in filing the appeal is



condoned, subject to payment of cost of **₹10,000/-** by the defendant to the plaintiff before the First Appellate Court.

- (iv) The appeal is restored to its original file.
- (v) The First Appellate Court is directed to dispose of the appeal on merits in accordance with law.
- (vi) The parties are directed to appear before the First Appellate Court on **05.06.2026** without awaiting any notice from the First Appellate Court.
- (vii) Parties are directed to co-operate with the First Appellate Court in the early disposal of the appeal.

Sd/-
(ASHOK S.KINAGI)
JUDGE