



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MRS. JUSTICE K.S. HEMALEKHA

MISCELLANEOUS FIRST APPEAL NO.2680 OF 2017 (CPC)

BETWEEN:

N. RAMACHANDRAIAH
S/O NADAKERAPPA,
AGED 60 YEARS,
RESIDING AT NO.79/9,
KARNATAKA HOUSING BOARD COLONY,
IIND STAGE, 6TH CROSS,
BASAVESHWARANAGAR,
BENGALURU-560079.

...APPELLANT

(BY SRI B. RAMESH, ADVOCATE)

AND:

1. THIMMANNA
S/O LATE APPAYYANNA,
AGED 62 YEARS,
R/AT ANJANNAGAR,
NEAR SRIGANDHADAKAVALU,
YESHWANTHPURA HOBLI,
BENGALURU-560079
2. SRI MUNIYAPPA
S/O LATE APPAYANNA,
AGED 58 YEARS,
R/AT ANJANANAGAR,
NEAR SRIGANDHADAKAVALU,
YESHWANTHPURA HOBLI,
BENGALURU-560079
3. SMT. JAYAMMA
D/O LATE APPAYYANNA,
W/O PUTTASWAMIAH,



NC: 2026:KHC:16651
MFA No. 2680 of 2017

AGED 64 YEARS,
R/AT SESHAGIRIPURA,
MAGADI TALUK
BENGALURU DISTRICT-561101.

4. SMT. KENCHAMMA
D/O LATE APPAYYANNA,
W/O SRI RAMAIAH,
AGED 60 YEARS,
R/AT KENGERI HOBLI,
BENGALURU NORTH TALUK-560074.
5. SMT. HANUMAKKA
D/O LATE APPAYYANNA,
W/O SRI GANGIAH,
AGED 60 YEARS,
R/AT ANJANANAGAR,
YESHWATHAPURA HOBLI,
BENGALURU NORTH TALUK-560091.
6. SMT. LINGAMMA
D/O LATE APPAYYANNA,
W/O NARASIMHAIAH,
AGED 53 YEARS,
R/AT THATTEKERE VILLAGE,
SOLUR HOBLI, MAGADI TALUK,
BENGALURU DISTRICT-562127.
7. SMT GEETHA
D/O LATE APPAYYANNA,
W/O VEERABHADRAIAH,
AGED 51 YEARS,
R/AT ANJANANAGAR,
YESHWANTHAPURA HOBLI,
BENGALURU NORTH TALUK-560091.
8. SRI SHIVANNA
S/O LATE APPAYYANNA,
AGED 60 YEARS,
R/AT SRIGANDHADAKAVALU,
YESHWATHPURA HOBLI,
BENGALURU NORTH TALUK-560079.

APPAYYANNA
SINCE DECEASED REPRESENTED BY HIS



**NC: 2026:KHC:16651
MFA No. 2680 of 2017**

LEGAL REPRESENTATIVES
RESPONDENT NOS.1 TO 8 HEREIN.

...RESPONDENTS

(NOTICES TO R2, R5, R6 & R7 ARE SERVED AND UNREPRESENTED;
V/O. DATED 20.03.2024 NOTICES TO R1, R3, R4 & R8 ARE HELD
SUFFICIENT)

THIS MFA IS FILED UNDER ORDER XLIII RULE 1(c) OF CPC.,
AGAINST THE ORDER DATED 13.01.2017 PASSED IN
MISC.NO.129/2011 ON THE FILE OF THE II ADDITIONAL SENIOR
CIVIL JUDGE BANGALORE RURAL DISTRICT, BANGALORE,
DISMISSING THE PETITION FILED UNDER ORDER IX RULE 9 OF CPC
AND PRAYED TO RESTORE O.S.139/2005 DATED 21.12.2009.

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

CORAM: HON'BLE MRS. JUSTICE K.S. HEMALEKHA

ORAL JUDGMENT

The present Miscellaneous First Appeal is preferred
by the petitioner assailing the order dated 13.01.2017
passed in Misc.No.129/2011 by the II Additional Senior
Civil Judge, Bengaluru Rural District, Bengaluru ('Trial
Court' for short), whereby the petition filed under Order IX
Rule 9 seeking restoration of O.S.No.139/2005, came to
be dismissed on the ground of limitation and lack of
sufficient cause.



Brief facts:

2. The appellant instituted O.S.No.139/2005 seeking specific performance of an agreement of sale dated 20.02.1995 in respect of the land measuring 5 acres 17 guntas situated in Andharahalli Village. In the suit, certain defendants were placed *ex parte*. The suit was dismissed against some of the defendants on 11.08.2009 for non-prosecution. Subsequently, on 21.12.2009 the suit itself was dismissed for non-prosecution due to the non-appearance of the plaintiff. It is stated by the appellant that the appellant's counsel who was conducting the case died on 05.09.2009 and this fact was not within his knowledge and he claims that he has come to know about the dismissal only in October, 2011, thereafter he filed Misc.No.129/2011 along with an application under Section 5 of the Limitation Act 1963 ('Act' for short) seeking condonation of the delay of 679 days. The Trial Court dismissed the application for condonation of delay and consequently the restoration petition.



3. Learned counsel for the appellant submits that the dismissal of the suit occurred due to the circumstances beyond his control, particularly the death of his counsel, which prevented proper prosecution. The appellant has no knowledge of the dismissal till October, 2011 and acted promptly thereafter. It is submitted that the respondents though served remained *ex parte* and did not contest the petition. The Trial Court failed to adopt a liberal approach in condoning the delay as mandated by said law. It is contended that the substantial justice should prevail over technicalities and refusal to condone delay results in denial of adjudication on merits. It is submitted that the appellant would suffer irreparable loss having invested substantial money in the suit property.

4. This Court has carefully considered submission and perused the material on record. Though the respondents have been served they have chosen to remain absent. The point that arises for consideration is:



"Whether the impugned order passed by the Trial Court warrants any interference by this Court?"

5. The Trial Court observed that the appellant failed to establish sufficient cause for condoning the delay of 679 days. The record disclosed that the plaintiff had remained absent on several days and has not diligently prosecuted the suit. The explanation regarding lack of knowledge and consultant was not satisfactory particularly in view of the long delay. Even in the absence of the contest by the respondents, the petitioner must independently establish sufficient cause. Accordingly, the application under Section 5 of the Act and the petition under Order IX Rule 9 CPC was dismissed.

6. It is not in dispute that the suit was dismissed for non-prosecution on 21.12.2009 and the restoration petition was filed after a delay of about 679 days. The explanation offered by the appellant is that his counsel died on 05.09.2009 and he had no knowledge of the



disposal until October, 2011. However, the record discloses that the suit has been repeatedly posted for taking steps and for the plaintiff's evidence and the appellant has failed to prosecute the matter diligently. The delay is not confined for a short period immediately following dismissal, but extends to a prolonged and unexplained delay indicating lack of due diligence. Even assuming the death of counsel, the appellant has not placed any material to demonstrate that he made reasonable efforts to follow up the case for nearly 2 years. At the same time, it is a settled principle that Courts ought to adopt a liberal approach in condoning delay where sufficient cause is shown, particularly to advance substantial justice.

7. The absence of the contest of the respondents and the nature of suit for specific performance involving valuable proprietary rights are relevant considerations. Nevertheless, liberal approach cannot be extended for cases of gross negligence or inaction. The explanation



offered does not satisfactorily account for the entire period of delay especially the period prior to the alleged knowledge of counsel's death. It is also relevant to note that the agreement of sale is of the year 1995, whereas the suit itself has been instituted only in the year 2005. The conduct of the appellant in approaching the Court after a considerable lapse of time, coupled with failure to diligently prosecute the proceedings thereafter, clearly indicates a lack of due diligence. This aspect assumes significance while considering whether sufficient cause has been made out for condonation of the inordinate delay.

8. This Court is of the consideration view that the Trial Court has rightly held that the appellant failed to demonstrate sufficient cause for condonation of such inordinate delay. The findings recorded are based on material on record and do not suffer from any perversity or illegality. The impugned order does not warrant any interference and accordingly, the point framed for consideration is answered. This Court pass the following:



ORDER

- i. The Miscellaneous First Appeal is hereby ***dismissed.***
- ii. The order dated 13.01.2017 passed in Misc.No.129/2011 by the II Additional Senior Civil Judge, Bengaluru Rural District, Bengaluru is hereby ***confirmed.***

Sd/-

JUSTICE K.S. HEMALEKHA

AT
List No.: 1 Sl No.: 43