



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD

DATED THIS THE 24TH DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR FIRST APPEAL NO.100049 OF 2026 (SP)

BETWEEN:

SHRI BASAVARAJ A/F SHETTAPPA NALAVADI,
AGE: 52 YEARS, OCC. AGRICULTURE,
R/O. MULAGUND,
TQ. AND DIST. GADAG-582117.

...APPELLANT

(BY SRI.SANTOSH B. RAHUT, ADVOCATE)

AND:

J.T.K. ARIHANT APPLIANCES PVT.LTD.,
J.T.K. TOWER, HUBBALLI,
REPRESENTED BY ITS MANAGING DIRECTOR,
SHRI HANUMANCHAND S/O. JETHMAL JAIN,
AGE: 61 YEARS, OCC. AGRICULTURE AND BUSINESS,
R/O. CLUB ROAD, HUBBALLI, TQ.HUBBALLI,
DIST. DHARWAD-580001.

...RESPONDENT

(BY SRI.SOURABH HEDGE, ADVOCATE)

THIS RFA IS FILED UNDER SECTION 96 R/W. ORDER XLI RULE 1 OF CPC., PRAYING ALLOW THIS APPEAL BY SETTING ASIDE THE JUDGMENT AND DECREE DATED 01.08.2025 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM GADAG IN O.S.NO.153/2015 BY DISMISSING THE SUIT OF THE PLAINTIFF/RESPONDENT, IN THE INTEREST OF JUSTICE AND EQUITY.

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





CORAM: THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
THE HON'BLE MRS JUSTICE GEETHA K.B.

ORAL JUDGMENT

(PER: HON'BLE MRS JUSTICE GEETHA K.B.)

ORDER ON I.A.NO.1/2026

Heard both sides on I.A.No.1/2026.

2. I.A.No.1/2026 is filed under Section 5 of the Limitation Act read with Section 151 C.P.C to condone delay of 92 days in preferring the appeal.

3. In the affidavit annexed to I.A.No.1/2026, appellant has stated that due to his ill-health, he was not able to attend the Court to lead his evidence and to prove his case after remand and because of that there is delay in filing the appeal. The delay is not intentional or deliberate one. Hence, prayed for allowing I.A.No.1/2026.

4. Along with this I.A., The appellant's blood test report dated 22.01.2026 is produced.



5. Learned counsel Sri. Sourabh Hegde for respondent has filed objections to I.A.No.1/2026 along with copy of orders in RFA No.100206/2019 dated 22.01.2025 and entire order sheet of O.S.No.153/2015.

6. It is the contention of respondent in the objection statement that only to drag on the proceedings and not to get the fruits of decree that was passed long back in favour of respondent, appellant has filed present appeal that too belatedly. Earlier, the suit of plaintiff was decreed in the year 2018 and RFA No.100206/2019 was preferred by the appellant, which was allowed and matter was remanded to trial Court for fresh disposal by giving suitable opportunity to both sides. The said opportunity was not utilized by the appellant. Hence, prayed for dismissal of I.A.No.1/2025 with exemplary costs.

7. After hearing arguments of both sides and verifying the records, the point that arises for consideration is:

"1. Whether the appellant establishes that he was prevented from sufficient cause in not referring this appeal within the prescribed period of limitation?"



8. The finding on this point is in NEGATIVE for the following:

REASONS

9. This is the appeal filed under Section 96 of C.P.C challenging the judgment and decree dated 01.08.2025 in O.S.No.153/2015, on the file of Principal Senior Civil Judge and CJM, Gadag.

10. In the affidavit annexed to I.A.No.1/2026, the appellant has only stated that due to his ill-health, he could not appear before trial Court to lead his evidence after remand and because of that ill-health, he could not file the present appeal in time.

11. It is not specified in the affidavit annexed to I.A.No.1/2026 that what was the ill-health of the appellant. But he has produced only one blood test report of the appellant dated 22.01.2026. It only says that as per the prescription of doctor, blood test of the appellant was conducted. Apparently, it reveals that there is more number of WBC counts than required.



12. Learned counsel for respondent has produced the certified copies of orders passed in RFA No.100206/2019 and entire order sheet of O.S.No.153/2015.

13. On perusal of those records, it is noticed that this Court earlier allowed the Regular First Appeal by setting aside the judgment and decree dated 11.12.2018 by providing opportunity to defendant to lead evidence and it was directed that parties shall appear before Court on 17.02.2025 without awaiting any further notice. After such remand, appellant appeared before trial Court on 26.03.2025 and prayed for time to lead evidence. Afterwards, he has taken four adjournments and on the fifth date of adjournment, he has filed I.A. to appoint Court Commissioner to record his evidence stating that he met with an accident two months prior to said date. Along with that application or atleast at the time of hearing arguments on that application, no medical records are produced and even, the date of accident is not mentioned. Under those circumstances, the trial Court rejected said application on 13.06.2025 and even thereafter, four adjournments are given to defendant to lead his evidence. But he has not utilized those opportunities and



ultimately on 03.07.2025, his evidence was taken as 'nil'. While granting adjournments, the Trial Court has imposed some costs, which were also not paid. Even afterwards four adjournments are given to learned counsel for defendant to submit his arguments. Even then, he has not submitted arguments. Hence, ultimately the judgment was pronounced on 01.08.2025.

14. This shows that the appellant has not produced any admissible reasons to say that he met with an accident and was not in a position to come to the Court to lead evidence. After rejection of his application for appointment of Court Commissioner, the appellant has not made any efforts to challenge the orders passed on the said application.

15. In this appeal, the appellant has not whispered anything about the accident met by him, but the blood test report is produced along with I.A.No.1/2026.



16. This is the appeal preferred challenging the judgment and decree passed in a suit for specific performance of the contract. In this case, the alleged registered agreement of sale was executed between plaintiff and defendants on 03.08.2013 and according to plaintiff, totally he has paid ₹.49,00,000/- through cheques and only ₹.1,00,000/- was balance and said ₹.1,00,000/- was also deposited before the Executing Court. Thus, according to plaintiff, he has performed his part of contract completely.

17. The only defence that was taken by the defendant before the Trial Court is that the agreement was executed as a security for the purpose of safety of funds invested by the plaintiff for his business interest. However, to substantiate those facts, no documentary evidence is produced before the Trial Court along with written statement. Production of documents along with written statement is mandatory, which is not being done in this case. Nothing was elicited in the cross-examination of plaintiff to substantiate his above contention.



18. Considering all these facts, rightly, the Trial Court has decreed the suit by rejecting the contention of defendant before the Trial Court.

19. Now this appeal is filed belatedly only to drag on the proceedings and no admissible reason is given by the appellant that why the appeal is filed belatedly.

20. Even though the application of present nature is to be considered leniently, in the facts and circumstances of the present case, the appellant is not entitled for such leniency. Already indulgence was shown to him earlier and such indulgence shown to him was not utilized by the appellant properly. Under these circumstances, we are of the considered opinion that the appellant has not established that he was prevented from sufficient cause in preferring the appeal belatedly.

21. Furthermore, he has misused the process of law twice. The suit of 2015 was decreed in the year 2018 itself and not allowed the plaintiff to get the fruits of the decree.



The same decree was revived by passing judgment on 01.08.2025. Hence, the point under consideration is answered in '**Negative**'. The conduct of plaintiff requires that I.A.No.1/2026 shall be dismissed with costs.

22. Hence, we proceed to pass the following:

ORDER

I.A.No.1/2026 filed under Section 5 of the Limitation Act is dismissed with costs of ₹.10,000/- (Rupees Ten Thousand only), which is to be paid to the High Court Legal Services Committee, High Court of Karnataka, Dharwad Bench, Dharwad, within four weeks.

Consequently, the appeal is dismissed as barred by limitation.

I.A.No.2/2026 stands dismissed.

**SD/-
(MOHAMMAD NAWAZ)
JUDGE**

**SD/-
(GEETHA K.B.)
JUDGE**

RKM-para 13
SH-para 14 to end
CT:PA
LIST NO.: 1 SL NO.: 11