



IN THE HIGH COURT OF KARNATAKA, AT DHARWAD
DATED THIS THE 23RD DAY OF MARCH 2026
BEFORE
THE HON'BLE MRS JUSTICE GEETHA K.B.

REGULAR SECOND APPEAL NO. 100441 OF 2024 (SP)

BETWEEN:

1. SMT. PARAWWA W/O. MALLAPPA SOUNSUDDI,
AGE: 49 YEARS,
OCC: HOUSEHOLD WORK/AGRICULTURE,
R/O. KALLOLI MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
2. CHAITRA D/O. MALLAPPA SOUNSUDDI,
AGE: 25 YEARS, OCC: HOUSEHOLD,
R/O. PALBHAVI RAIBAG-591235,
TQ: RAIBAG, DIST: BELAGAVI.
3. SMT. KAVITA W/O. RACHAPPA BALIGAR,
AGE: 23 YEARS, OCC: HOUSEHOLD,
R/O. BILAKUNDI VILLAGE-591227,
TQ: GOKAK, DIST: BELAGAVI.
4. KUMARI JYOTI D/O. MALLAPPA SOUNSUDDI,
AGE: 21 YEARS, OCC: HOUSEHOLD,
R/O. KALLOLI MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
5. KUMAR MUTTEPPA S/O. MALLAPPA SOUNSUDDI,
AGE: 17 YEARS, OCC: STUDENT,
R/O. KALLOLI MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
(SINCE MINOR R/BY NATURAL GUARDIAN OF
HIS MOTHER WHO IS
APPELLANT NO.1 IN PRESENT APPEAL)

...APPELLANTS

(BY SRI. SHRIHARSH A. NEELOPANT, ADVOCATE)



AND:

1. MAYAPPA S/O. SIDDAPPA KATTIKAR,
AGE: 37 YEARS, OCC: AGRICULTURE,
R/O. RAJAPUR VILLAGE, MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
2. SMT. SATTEWWA W/O. MALLAPPA SOUNSUDDI,
AGE: 49 YEARS, OCC: HOUSEHOLD
WORK/AGRICULTURE,
R/O. KALLOLI, MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
3. SIDDAPPA S/O. BHIRAPPA KATTIKAR
AGE: 47 YEARS, OCC: AGRICULTURE,
R/O. RAJAPUR VILLAGE, MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.
4. MARUTI S/O. PUNDALIK MAYANNAVAR,
AGE: 49 YEARS, OCC: AGRICULTURE,
R/O. RAJAPUR VILLAGE, MUDALAGI-591224,
TQ: MUDALAGI, DIST: BELAGAVI.

...RESPONDENTS

(BY SRI. L.T. MANTAGANI, ADVOCATE FOR C/R1, R3 & R4)

THIS RSA IS FILED UNDER SECTION 100 OF CPC, PRAYING TO SET- ASIDE THE IMPUGNED JUDGMENT AND DECREE PASSED BY THE XII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BELAGAVI SITTING AT GOKAK, IN R.A. NO.8003/2024 DATED 28.03.2024 AND ALSO SET ASIDE THE IMPUGNED JUDGMENT AND DECREE DATED 01.04.2022 PASSED IN O.S. NO.380/2019 PASSED BY THE II ADDITIONAL SENIOR CIVIL JUDGE, GOKAK AND DISMISS THE SUIT IN O.S. NO.380/2019 IN THE INTEREST OF JUSTICE AND EQUITY.

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

CORAM: THE HON'BLE MRS JUSTICE GEETHA K.B.



ORAL JUDGMENT

1. Even though the appeal is at the stage of admission, with the consent of both sides, heard on merits.
2. This is the appeal filed under Section 100 CPC for setting aside the judgment and decree dated 28.03.2024 passed in R.A.No.8003/2024 on the file of XII Additional District Judge, Belagavi, sitting at Gokak (hereinafter referred to as 'the first Appellate Court', for short), and to set aside the impugned judgment and decree dated 01.04.2022 passed in O.S.No.380/2019 on the file of II Additional Senior Civil Judge, Gokak (hereinafter referred to as 'the trial Court', for short) and prayed for dismissal of the suit.
3. The parties would be referred with their ranks, as they were before the trial Court for the sake of convenience and clarity.



4. The plaintiff has filed the suit before trial Court, praying for specific performance of the agreement of sale dated 15.03.2019 in respect of suit schedule property bearing Survey No. 112/1, measuring 2 acres 29 guntas 8 annas out of 5 acres 19 guntas situated at Rajapur Village, Mudalagi Taluk.
5. It is the contention of plaintiff that, the original defendant agreed to sell the suit schedule property, for a sum of ₹6,00,000/- and received an advance sale consideration amount of ₹5,00,000/- and executed registered agreement of sale dated 15.03.2019. During pendency of the suit, original defendant died and his legal representatives were brought on record as defendant Nos.1(a) to 1(f). Thereafter they contested the suit by filing their written statement and by cross-examining P.W.1. In spite of giving sufficient opportunities, they have not cross-examined P.W.2 and P.W.3.



6. After recording evidence and hearing arguments, trial Court came to the conclusion that the plaintiff has proved his case and decreed the suit, directing the legal representatives of original defendant to execute the registered sale deed in favour of plaintiff by receiving balance sale consideration amount.
7. After passing this judgment, legal representatives of the original defendant/appellants herein, have filed R.A.No.8003/2024. There was delay of 01 year 09 months and 22 days in filing the first appeal. In the meanwhile, plaintiff has filed execution petition wherein the Court Commissioner has executed registered sale deed on 26.11.2023 on behalf of the defendant/legal representatives of defendant and possession was handed over to plaintiff. Thus, only after execution of the sale deed, the first appeal was filed before the first Appellate Court.



8. The only reason assigned for filing the appeal belatedly before the first Appellate Court is that, due to sudden death of original defendant, his legal representatives were in shadow mood and due to difference of opinion between them, and due to restrictions of COVID-19 Pandemic, they could not approach their advocate. Further, due to ill-health of the appellant who sworn to the affidavit, they could not prefer the appeal.
9. It is to be noted here that the judgment of the trial Court was passed on 01.04.2022 and the first Appellate Court has passed its judgment on 28.03.2024. The benefit under Section 4 of the Limitation Act, 1963 was given up to 28.02.2022. COVID-19 restrictions were completely lifted from 01.03.2022 onwards. Thus, only after lifting COVID-19 restrictions, judgment of the trial Court was passed. Hence, said ground is not available to the appellants. There is no averment before the trial Court as to what



was the ill-health of the Legal Representative of the defendant, who had sworn to the affidavit annexed to the application to condone delay of 01 year 09 months and 22 days. Further what was the impediment to other legal representatives to file the appeal belatedly is also not mentioned. Thus, this ground was also not established by appellants.

10. Insofar as shadow mood of appellants is concerned, they have already participated before the trial Court by engaging an advocate of their choice and they have filed their written statement and contested the suit. Initially they have not cross-examined the plaintiff and his witnesses, but ultimately recalled P.W.1 and cross-examined him.
11. Considering all these facts, trial Court has decreed the suit. Thus, there was participation of Legal Representatives of the defendant in the original suit itself. Hence, their contention that they were in



shadow mood due to sudden death of original defendant was not accepted by the first Appellate Court.

12. Learned counsel for the appellants, Sri Shriharsh Neelopant would submit that, only because of delay in filing the first appeal, the right of Legal Representatives of defendant over the property could not have been taken away and the delay in filing the appeal could have been compensated in terms of money.

13. In this regard, he relied on the judgment of Co-ordinate Bench of this Court in the case of **Nagappa Vs. Ramachandra and Others¹**. Paragraph No.5 of the said judgment reads as under:

"5. On perusal of impugned order, it is seen that appellant had pleaded ill-health. In support of application, appellant had also produced certificate issued by hospital. Appellate Court disbelieved said certificate

¹ R.S.A.No.100095 of 2021, disposed of on 24.03.2022



even when respondents had not disputed same. Opposition of respondents to application was on the ground that appellant's son was a practicing advocate. Whether son of appellant was aware of proceedings and whether appellant had constructive notice of impugned judgment and decree is not stated."

14. Learned counsel also relied on the judgment of the Coordinate Bench of this Court in the case of **Khaja and Others Vs. Sangamesh²**. Paragraph Nos.8 and 12 of the said judgment reads as under:

*"8. Further, the learned counsel relies upon the decision of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and others** [Civil Appeal Nos.8183-8184 of 2013] reported in (2013) 12 SCC 649, and canvassed that the Hon'ble Supreme Court, after referring to various earlier judgments, has culled out the principles that should guide the Court in its consideration of an application for condonation of delay. The learned counsel relies upon the following guidelines, insofar as the application for*

² R.S.A.No.200055 of 2017, disposed of on 11.07.2019



condonation by those other than the State or Public Body or an entity representing a collective cause:

"(i) There should be a liberal, pragmatic, justice- oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the Courts are



required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

(vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

(viii) There is a distinction between inordinate delay and delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

(ix) The conduct, behavior and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation."

The learned counsel submits that if the circumstances relied upon and the reason



offered by the appellants to explain the delay are examined in the light of the aforesaid guidelines, neither the application nor the appeal could have been dismissed on the ground that the appellants were trying to disown their lawyer or that the appellants were not bonafide in their explanation.

12. In the background of such counter claims, the learned counsel and the bailiff, who effected the service on the appellant in the execution proceedings, should have been examined, and in the peculiarities of the case, the respondent was not entirely without the onus of establishing his bonafide conduct by requesting for summoning of the learned counsel who had entered appearance on behalf of the appellant – plaintiff as well as the bailiff. The law insofar as consideration of application under Section 5 of the Limitation Act is that the courts must not take a pedantic approach but shall take such pragmatic approach as would be warranted in the peculiarities of the case to do complete justice. The substantial justice must be the paramount consideration and not a technical consideration, and there cannot be any presumption of gross negligence. The judgment of the First Appellate Court does not indicate that these considerations have gone in while deciding the application under Section 5 of the Limitation Act, 1963.”



In paragraph No.8 of the aforesaid case, the Coordinate Bench of this Court relied upon the judgment of the Hon'ble Supreme Court in the case of ***Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Others***³, wherein the guidelines to be followed while considering the application for condonation of delay are stated. Generally, there shall be liberal, pragmatic, justice-oriented approach and sufficient cause should not mean explanation of each and every day's delay, but there shall be proper reasoning to condone the delay; however, there shall not be deliberate inaction. In 8th guideline of the aforesaid judgment, it is said that there shall be a distinction between inordinate delay and delay of short duration. In case of inordinate delay, strict approach is required, but not in case of short duration.

³ (2013) 12 SCC 649



15. In the instant case, there is an inordinate delay of 01 year 09 months 22 days in approaching the first Appellate Court by the appellants. They have not given any admissible reason for such inordinate delay, as discussed above. The first contention raised by them is that they were under shock due to sudden death of first defendant and they were in shadow mood, cannot be accepted because they have already participated in the suit proceedings. The second one is that there was difference of opinion amongst legal representatives of the original defendant. Under those circumstances, only those who were interested could file the appeal by making other legal representatives as respondents and this cannot be a bar for them to approach the appellate court. The third one is ill-health, but what was the ill-health is not mentioned either in the affidavit annexed to the said application or by producing any medical document.



16. The attitude and conduct of the appellants is also very relevant and is to be taken into consideration. After disposal of the suit, Execution Petition No.85/2022 was filed wherein notice was issued to present appellants; they have not participated in execution proceedings and then the Court Commissioner has executed the registered sale deed and balance sale consideration amount was deposited before the trial Court. Even after service of notice of execution petition, the Legal Representatives of original defendant have not made any efforts to file the appeal. Only after due execution of the judgment and decree, the first appeal was filed.
17. Learned counsel for appellants would submit that, according to Section 144 CPC, if the judgment and decree is varied in appeal, then he is entitled for consequential relief. However, in the instant case, it is not in dispute that on 26.11.2023 itself, the sale deed was executed and possession was delivered. After



several months of it, the appeal was filed and it was not during pendency of the appeal as happened in RSA No.200055/2017. Hence, the said ruling is not helpful for the appellants.

18. The above facts show the conduct of the appellants. The leniency that is available under Section 5 of the Limitation Act should not be misused for a person who is not diligent. Only a diligent person is entitled for justice.
19. In this regard, this court relies on the judgment of the Hon'ble Supreme Court in case of ***Thirunagalingam Vs. Lingeswaran and Another***⁴. At paragraph 32 of the said judgment it is held as under:

"32. Further, this Court has repeatedly emphasized in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the

⁴ 2025 SCC OnLine SC 1093



present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

20. In the instant case also only based on generosity, the delay cannot be condoned as a matter of course. As discussed above, the appellants/defendants failed to show reasonable grounds of delay in filing the first appeal.
21. Considering these aspects, the first Appellate Court was right in dismissing the appeal as barred by limitation. Hence, no substantial question of law would arise for consideration in this appeal.
22. For the aforesaid reasons, this Court proceeds to pass the following:



ORDER

Appeal filed under Section 100 CPC is dismissed, by confirming the judgment and decree dated 28.03.2024 passed in R.A.No.8003/2024 on the file of the XII Addl. District Judge, Belagavi, Sitting at Gokak, by confirming the judgment and decree dated 01.04.2022 passed in O.S.No.380/2019 on the file of II Addl. Senior Civil Judge, Gokak.

Sd/-
(GEETHA K.B.)
JUDGE

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LIST NO.: 1 SL NO.: 19