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Sri Venkateshappa vs Sri Srinivasa

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Court : Karnataka

Decided On : Oct-31-2025

Judge : Jyoti M

Appeal No. : RSA/1306/2020

Appellant : Sri Venkateshappa

Respondent : Sri Srinivasa

Judgement :

-1-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF OCTOBER, 2025 BEFORE THE HON'BLE MS. JUSTICE JYOTI M REGULAR SECOND APPEAL NO. 1306 OF 2020 (SP) BETWEEN:

1. SRI. VENKATESHAPPA, SON OF HOSA MUNIYAPPA, AGED ABOUT 52 YEARS,

2. SRI. CHANNAKESHAVA, SON OF VENKATESHAPPA, AGED ABOUT 28 YEARS,

3. SRI. G.V.MANJUNATHA,

SON OF VENKATESHAPPA, AGED ABOUT 26 YEARS, ALL THE APPELLANTS ARE RESIDING AT GONIMARADAHALLI VILLAGE, BASHETTIHALLI HOBLI, SIDLAGHATTA TALUK, KOLAR DISTRICT - 562105. Digitally signed APPELLANTS by THEJAS (BY SRI. C.SHANKAR REDDY., ADVOCATE) KUMAR N Location: HIGH AND: COURT OF KARNATAKA SRI. SRINIVASA, AGED ABOUT 37 YEARS, S/O. LATE MUNIYAPPA, RESIDING AT GONIMARADAHALLI VILLAGE, BASHETTIHALLI HOBLI, SIDLAGHATTA TALUK, KOLAR DISTRICT - 562105. RESPONDENT (BY SRI. R.BHADRINATH, ADVOCATE) -2-

THIS REGULAR SECOND APPEAL IS FILED UNDER ORDER

XLI RULE II READ WITH SECTION 100 OF THE CODE OF CIVIL PROCEDURE. THIS REGULAR SECOND APPEAL IS LISTED FOR ADMISSION, THIS DAY, AN ORDER IS MADE AS UNDER:

ORAL JUDGMENT

Sri.C.Shankar Reddy., counsel for the appellants has appeared through video conferencing. Sri.R.Bhadrinath., counsel for the respondent has appeared in person.

2. The captioned appeal is listed today for Hearing - interlocutory application, i.e., I.A.No.1/2020 for condonation of a delay of 712 days in filing the appeal.

3. Counsel for the appellants submits that there is a

delay of 712 days in filing the appeal. Accordingly, an application is filed in I.A.No.1/2020 seeking condonation of delay. Sri.Venkateshappa - appellant No.1 has sworn to an affidavit explaining the sufficiency of reason to condone the delay. Counsel submits that the delay caused in filing the appeal is neither wanton nor with any malafide intention.

-3- Hence, he submits that the delay in filing the appeal may be condoned. Counsel Sri.R.Bhadrinath., submits that statement of objection is filed and the same may be taken note of and the application may be dismissed.

4. Heard the contentions urged on behalf of the respective parties on condonation of delay and perused the appeal papers, application, affidavit and the statement of objections with utmost care.

5. Let me see whether the appellants have made out grounds to condone the delay in filing the appeal. Let us quickly glance through the law of limitation. The principle enunciated under Section 5 of the Limitation

Act is that a Court is vested with judicial discretion to admit an appeal, or an application filed after the expiry of the period of limitation, on sufficient cause being shown for the delay. It must be remembered that the Court has full discretion to refuse an extension of time, but this discretion, like other judicial discretions, must be exercised with vigilance and -4- circumspection according to justice, common sense, and sound judgment. It must not be exercised in an arbitrary, vague, and fanciful manner. Delay cannot be condoned as a matter of judicial generosity. Condonation of delay cannot be claimed as of right. Having regard to the words may be admitted in Section 5, the Court has discretion, even where sufficient cause is shown, in not admitting an appeal filed after time, on the ground that the extension of time under that Section is a matter of concession or indulgence to the appellant/ petitioner who has come late and cannot be claimed as of right. The proof of "sufficient cause" is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court. What counts is not the length of the delay but the sufficiency of the cause. The Court should not come to the aid of a party where there has been an unwarrantable delay in seeking the statutory remedy. Any remedy must be sought with reasonable promptitude, having regard to the circumstances. -5- No doubt, there are authorities to say that the words

"sufficient cause" should receive a liberal construction to advance substantial justice. What is sufficient cause cannot be described with certainty because the facts on which questions may arise may not be identical. What may be sufficient cause in one case may be otherwise in another. Hence, the whole thing should be

decided with reference to the circumstances of each case. Each case must be decided on its facts. But it must not be lost sight of that the appellant/ petitioner will have to prove that he was diligent. Further, he will have to explain the day- to-day delay from the last day of limitation.

6. Reverting to the facts of the case, the suit giving

rise to this appeal was brought by the plaintiff seeking the relief of specific performance. The Trial Court vide Judgment and Decree dated 15.11.2011 decreed the suit. As against the same, the defendants filed an appeal before the First Appellate Court. The First Appellate Court vide Judgment and Decree dated 12.01.2018 dismissed the appeal. Aggrieved by the same, the defendants have filed the captioned second appeal.

-6- There is a delay of 712 days in filing the appeal. Accordingly, an application is filed in I.A.No.1/2020 to condone the delay. Perused the application and also the affidavit with care. Venkateshappa - appellant No.1 has sworn to a declaration of

facts in the form of an affidavit. In the affidavit, he has stated

that he was in regular touch with the advocate, but was never informed about the disposal of the appeal. He has also stated that due to Covid-19 pandemic and financial constraints, they could not file the appeal immediately. I am unable to accept the reasons accorded in the

affidavit. The suit was filed for specific performance. As the suit was decreed, the appellants should have been more diligent. The contention regarding non-filing of the appeal due Covid-19 pandemic cannot be accepted. The reason is simple. The First Appellate Court dismissed the appeal on 12.01.2018. The appellants ought to have filed the appeal within three months. The world witnessed Covid-19 pandemic from March 2020. Nothing prevented the appellants to file the appeal well in time or even before the out break of Covid-19 pandemic. In my view, the appellants have not made any grounds to condone

delay. As already noted above, the Court has full discretion to refuse an extension of time. Furthermore, the Honble Apex Court in SHIVAMMA (DEAD) BY LRS VS. KARNATAKA HOUSING BOARD & OTHERS - CIVIL APPEAL NO. 11794 OF 2025 disposed of on 12.09.2025, has held that the constitutional courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favorable orders are frustrated at later stages. The Apex Court has also held that no litigant should be permitted to be so lethargic and apathetic, much less be permitted by the courts to misuse the process of law. The reasons accorded in the affidavit and the submission made on behalf of the appellants regarding the delay in filing the appeal are not satisfactory, and hence, this Court exercises the discretionary power and refuses an extension of time.

I decline to condone the delay. Accordingly, I.A.No.1/2020 is rejected. -8-

7. This Court has rejected the application to condone the delay, hence, there is nothing to discuss on the merits of the case. Resultantly, the Regular Second Appeal is rejected.

Because of rejection of the appeal, pending interlocutory applications, if any, are disposed of and interim direction if any stands discharged. SD/- (JYOTI M) JUDGE TKN List No.: 1 Sl No.: 28

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