

**Sangramappa Vs. Shankarappa**

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**SooperKanoon Citation :** [sooperkanoon.com/379118](http://sooperkanoon.com/379118)

**Court :** Karnataka

**Decided On :** Jul-25-2000

**Reported in :** 2001(4)KarLJ39

**Judge :** M. F. Saldanha, J.

**Acts :** [Limitation Act,1963](#) - Sections 5 - Schedule - Article 124; [Code of Civil Procedure \(CPC\), 1908](#) - Orders 41, Rule 17 - Order 47, Rules 1

**Appeal No. :** Revision Petition No. 129 of 2000

**Appellant :** Sangramappa

**Respondent :** Shankarappa

**Advocate for Def. :** Sri G. S. Visveswara, Adv.

**Advocate for Pet/Ap. :** Smt. Akkamahadevi M. C., Adv.

**Judgement :**

ORDER

1. The respondent's learned Advocate had requested for time on two occasions which was granted, the reason being that there is an abnormally long delay of 809 days in filing of this review petition and it was her submission that apart from the legal aspects of the case, that she is dependant entirely on her client as far as dealing with the factual aspects for which purpose her instructions were that

objections in writing be filed. The learned Advocate has been repeatedly contacting the client and requesting the respondent to affirm the requisite affidavit but, despite the best efforts and the indulgence shown by the Court the respondent has not turned up. Situations like this undoubtedly cause an embarrassment to the learned Advocates and today, the learned Advocate informs the Court that she is heavily handicapped insofar as the client has not furnished her with any papers on the basis of which she can advance arguments nor has the client turned up. In fact, the learned Advocate stated that she has the intention of informing the respondent through a formal notice that she will not be able to represent him hereinafter. It was for this reason that the hearing of I.A. No. I was adjourned several times but, it is not possible for the Court to extend indefinite indulgence even if it is for good reason to one party to a litigation because there is a corresponding injustice that occurs to the opposite party who is at the receiving end. I.A. No. I was accordingly heard by me today.

2. The reasons given for condoning the abnormally long delay of 809 days are that immediately after service of notice from the High Court in the second appeal, the respondent had gone to the learned Advocate in Bidar by the name of Sri Kalidasarao Deshpande. The learned Advocate took the signature of the respondent on the vakalath and an amount of Rs. 3,000/- as legal fees for engaging an Advocate at Bangalore to contest the second appeal. The respondent has stated in his affidavit that he is aged 70 years, that he lives in a remote village, that he is a person of modest means and furthermore, that he is not keeping good health. Whenever he enquired with the learned Advocate he was informed that the case was pending. After the High Court disposed of the second appeal, which was done because the respondent was served and had not entered any appearance and had not contested, the opposite party took out execution proceedings and when the execution notice was received by the respondent, he went to the learned Advocate and enquired about the case and the learned Advocate informed him that the case is still pending. When he was shown the execution notice, he admitted that he had not engaged the lawyer at Bangalore to defend the second appeal. The respondent states that after this, he was required to come to Bangalore personally and then go back because he had to collect all the case papers and that this process took him a few months. The long delay between the

parsing of the order by the High Court which was on 20th October, 1997 and the filing of the review petition which was on 7th February, 2000 has been explained as indicated by me above. The factual statements are unrefuted. They are submissions made on oath. The record shows that nobody appeared for the respondent when the second appeal was disposed of and in this background I have absolutely no ground to doubt the truthfulness of the statements made. Consequently, the position that emerges is that the delay has occurred for no fault of the respondent. My attention has been drawn to a decision of the Supreme Court in the case of Rafiq and Another v Munshilal and Another, where the Supreme Court took an extremely rigorous view in a situation of far less seriousness than the present case and the Supreme Court ultimately held that the old maxim which is to the effect that a litigant cannot be penalised for the error or negligence of the lawyer was reiterated and the Supreme Court granted the relief. The Supreme Court also took suo motu action against the learned Advocate. The maxim is well-settled that in cases where the facts and circumstances justify the condonation of delay and where the delay has been properly explained that the Court is within its discretion to condone the delay. This is one such case and the delay will accordingly have to be condoned. I.A. No. I is accordingly allowed.

3. I need to also record here that the statements contained in the affidavit in support of I.A. No. I are not only distressing but, disturbing. When an incident of this type comes up before the High Court, the High Court would be failing in its duty if it closes its eyes to what has happened. I need however to take note of the fact that though I have accepted the correctness of the statements that the learned Advocate Sri Deshpande is not before the Court and therefore, it would not be fair to say anything without affording him an opportunity to indicate what he has to say about this state of affairs. Consequently, the Registrar-General shall forward through the District Judge concerned a copy of the affidavit along with the copy of this order to the learned Advocate and he shall show cause as to why the High Court should not refer this case to the Disciplinary Committee of the Bar Council. The notice shall be returnable on 4th September, 2000. I.A. No. I is accordingly allowed.

