

**IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH**

DATED THIS THE 30<sup>TH</sup> DAY OF JUNE, 2015

BEFORE

**THE HON'BLE MR. JUSTICE B. VEERAPPA**

C.R.P. NO.1081/2012

BETWEEN:

1. YAMANURAPPA S/O PARAPPA MANGALORE  
SINCE DECEASED BY HIS LRS  
1A. HULLAMMA W/O YAMANURAPPA  
AGE: 55 YEARS, OCC: AGRICULTURE  
  
1B. VEERESH S/O. YAMNURAPPA  
MANGALORE, AGE: 35 YEARS,  
OCC: BUSINESS.  
  
1C. PUTTANNA S/O. YAMNURAPPA  
MANGALORE, AGE: 31 YEARS,  
OCC: BUSINESS.
2. YELLAWWA W/O MARIYAPPA HADIMANI  
AGE: 57 YEARS, OCC: AGRICULTURE
3. YELLAPPA S/O PARAPPA MANGALORE  
AGE: 50 YEARS, OCC: AGRICULTURE

ALL ARE R/AT: MUCHIGER ONI,  
KOPPAL, DIST: KOPPAL.

... PETITIONERS

(BY SRI. CHANDRASHEKAR P PATIL, ADV.,)

AND

SYED SAB S/O DADE SAB ATTAR  
AGE: MAJOR,  
R/O: KOPPAL, DIST: KOPPAL

... RESPONDENT

(BY SRI. B SHARANABASAWA, ADV., )

THIS CRP IS FILED UNDER SECTION 115 OF CIVIL PROCEDURE CODE AGAINST THE ORDER DATED 18.06.2012 IN CIVIL MISCELLANEOUS NO.6/2005 ON THE FILE OF THE DISTRICT JUDGE, KOPPAL I.A. NO.1 IS DISMISSED CONSEQUENTLY CIVIL MISC.NO.6/2005 IS DISMISSED.

THIS CRP COMING ON FOR ADMISSION THIS DAY,  
THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner has filed the above civil revision petition against the order dated 18.06.2012 made in Civil Misc. No.6/2005 dismissing I.A. No.1 for condonation of delay and consequently, Civil Misc.No.6/2005 is also dismissed.

2. The facts are not in dispute that original plaintiff Smt. Huligawwa had filed O.S. No.29/1985 for declaration of title and injunction in respect of Sy.No.261 new Sy.Number 205 measuring 20 guntas out of 2 acre situated at Koppal town. The said suit came to be renumbered as O.S. No.29/1994 and during the

pendency of suit the original plaintiff died and the present petitioners were brought on record as L.Rs. After contest, the said suit came to be dismissed on merits on 31.08.2000. Aggrieved by the said judgment and decree, the present petitioners filed R.A. No.8/2000 before the District and Sessions Judge, Koppal. The said R.A. No.8/2000 came to be dismissed for default on 03.11.2004. Against the said order, the present petitioners filed Misc.No.6/2005 to restore the order dated 03.11.2004. Unfortunately, the said miscellaneous petition was also dismissed for default on 02.02.2007. Again the petitioner has filed Civil Misc.No.7/2007 for restoration of Misc. No.6/2005 and the said case came to be allowed with cost of Rs.200 on 17.12.2011 and set aside the order dated 02.02.2007 made in Civil Misc.No.6/2005. The office was directed to restore the Civil Misc. No.6/2005 to its original file.

3. Thereafter, petitioners filed I.A. No.1 in Civil Misc. No.06/2005 under Section 5 of the Limitation Act, 1963 to condone the delay of 38 days and admit the R.A. No.8/2000 for

disposal on merits. After considering the delay application, the Trial Court has dismissed I.A. No.1 and consequently Civil Misc. No.06/2005 dismissed on the ground that there is a delay of 38 days in filing the appeal. Against the said order, the present civil revision petition is filed.

4. I have heard the learned Counsel for the parties to the lis.

5. Sri.Chandrashekhar P.Patil, learned Counsel for the petitioner has contended that there was a delay of 38 days in filing the R.A. No.8/2000 on the ground that 3<sup>rd</sup> respondent was alone looking after the case and he was not well and there was no representation either by the 3<sup>rd</sup> petitioner or his counsel and their advocate had been to Madras but junior advocate who was present sought time, which was not granted and the RA was dismissed for default. The Trial Court ought to have condoned the delay in order to do justice between the parties since the suit was filed for declaration and consequential relief of permanent

injunction. Therefore, he sought to allow the civil revision petition.

6. Per contra, Sri.Sharanabasava, learned Counsel for the respondent strenuously contended that the impugned order passed by the Trial Court is perfectly justified, as the petitioner conveniently dragged the proceedings for more than 30 years. Suit was filed in the year 1985 and he dragged the proceedings till today. Therefore, he submitted that the petitioner has not made out any ground to condone the delay of 38 days in filing the appeal etc., and sought to dismiss the revision petition.

7. I have given my thoughtful consideration to the arguments advanced by both the learned Counsel for the parties and perused the material on record.

8. It is not in dispute that the original plaintiff in the Trial Court had filed suit for declaration and permanent injunction in respect of immovable property and the said suit came to be dismissed on merits on 31.08.2000 and as against the said order,

the LRs. Of the plaintiff have filed an appeal in R.A. No.8/2000 on 09.10.2000 within time. Unfortunately, due to the absence of the learned Counsel for the appellant, it was dismissed for default on 03.11.2004 and miscellaneous application was also dismissed on 02.02.2007. It is well-settled position of law, that a party should not be deprived of the substantial justice on technical grounds. In the impugned order, while rejecting I.A. for condonation of delay of 38 days, the Trial Court has stated that there are no sufficient grounds to condone the delay. Since the suit is for declaration and for injunction in respect of immovable property, the Trial Court should have taken a liberal approach in the matter while considering 38 days delay in filing the appeal. Whenever the delay is condoned, the case would be decided by the Court on merits after hearing the parties. When the substantial justice and technical justice are pitted against each other, cause of substantial justice deserves to be preferred for the other. There is no presumption that delay is culpable negligence or on account of

malafide litigation does not stand to the benefit by restoring the delay in fault.

9. In the present case, as already stated above the legal battle is between the parties in respect of immovable property and the relief sought for declaration and for injunction. It is on the fault of the learned Counsel who represents the appellant before the appellate Court, the matter was dismissed for default. In fact, the Hon'ble Supreme Court time and again held that the word 'sufficient cause' has to be liberally construed. What will happen if the delay is condoned, at the most the appeal will be heard on merits. Rejecting the appeal on threshold, will lead to miscarriage of justice.

10. The Hon'ble Supreme Court in the case of ***Rafiq and Munshilal and another*** reported in ***AIR 1981 SC 1400*** while considering the provisions of Section 35 of Code of Civil Procedure has observed that party should not suffer for misdemeanour or inaction of his counsel. Merely because of his

advocate's default, it cannot be a ground to deny substantial justice.

11. There is no doubt in the present case, that the present petitioners/plaintiff have dragged the proceedings for more than 30 years which can be compensated by imposing cost. Ultimately, the Court has to decide the case on merits and not on technical ground. As already observed by the Hon'ble Supreme Court stated supra, justice shall be done to the parties to the lis.

12. Accordingly, the order passed by the District and Sessions Judge, Koppal dated 18.06.2012 made in Civil Misc.No.06/2005 on I.A. No.1 is set aside. Accepting the cause shown in I.A.No.1 for condonation of delay of 38 days is allowed subject to condition that the petitioner shall pay the cost of Rs.25,000/- to the respondents for dragging the proceedings for all these years and the petitioner shall pay the cost within eight weeks from the date of receipt of the order. The appellate Court is directed to proceed with the appeal on merits subject to

payment of cost of Rs.25,000/- failing which, the impugned order stands restored.

Accordingly, the civil revision petition is allowed.

**SD/-  
JUDGE**

BS