



CNR: KAHC010207812014

NC: 2026:KHC:47007
RSA No. 751 of 2014

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S.KINAGI

REGULAR SECOND APPEAL NO. 751 OF 2014 (MON)

BETWEEN:

SRI.A. RAMAKRISHNA SHABARAYA
PRINCIPAL, AGED ABOUT 43 YEARS
KARAVALI COLLEGE OF PHARMACY,
N.H. 13, NEAR ST. JOSEPH ENGINEERING COLLEGE,
VAMANJOOR, MANGALORE
PRESENTLY PRINCIPAL & DIRECTOR,
SRINIVAS COLLEGE OF PHARMACY,
VALACHIL, FARENGIPETE POST,
MANGALORE-574143

...APPELLANT

(BY SRI. SHARATH GOWDA G B., ADVOCATE)

AND:

NITTE EDUCATION TRUST
7TH FLOOR, RAMBHAVAN COMPLEX,
KODIALBAIL, MANGALORE-575003
REPRESENTED BY ITS TRUSTEE

...RESPONDENT

(BY SRI. ARAVIND V CHAVAN, ADVOCATE)

THIS RSA IS FILED U/S. 100 OF CPC AGAINST THE
JUDGEMENT & DECREE DTD 17.02.2014 PASSED IN
R.A.NO.97/2012 ON THE FILE OF THE I ADDITIONAL DISTRICT
JUDGE, D.K.MANGALORE, DISMISSING THE APPEAL AND



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CONFIRMING THE JUDGEMENT AND DECREE DTD 13.04.2012
PASSED IN O.S.NO.296/2007 ON THE FILE OF THE II
ADDITIONAL SENIOR CIVIL JUDGE, MANGALORE. D.K.

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

CORAM: HON'BLE MR. JUSTICE ASHOK S.KINAGI

ORAL JUDGMENT

This Regular Second Appeal is filed by the appellants
challenging the order on I.A.No.II and dismissal of the
appeal dated 17.02.2014 passed in R.A.No.97/2012 by the
learned I Additional District Judge, D.K., Mangalore.

2. For convenience, the parties are referred to, as
per their ranking before the trial Court. The appellant was
the defendant and the respondent was the plaintiff.

3. Brief facts, leading rise to filing of this appeal are
as follows:

The plaintiff filed a suit for recovery of money against
the defendant in O.S.No.296/2007 on the file of learned II



Additional Senior Civil Judge, Mangalore, D.K. The said suit was partly decreed vide judgment dated 13.04.2012 and held that the plaintiff Trust is entitled to recover a sum of Rs.8,19,516/- with future interest at the rate of 10% per annum from the date of institution of the suit till the realisation of the amount from the defendant.

4. The defendant, aggrieved by the judgment and decree passed in O.S.No.296/2007, preferred an appeal in R.A.No. 97/2012 on the file of learned I Additional District Judge, Dakshina Kannada, Mangalore along with an application for condonation of delay of 90 days in preferring an appeal. The First Appellate Court has held an enquiry on I.A.No.II.

5. The plaintiff himself as PW.1 and produced four documents and marked as Exs.P1 to P4. The First Appellate Court rejected I.A.No.II on the ground that the



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defendant has failed to show a sufficient cause for condoning a delay of 90 days in preferring an appeal, rejected I.A.No.2 and consequently, dismissed the appeal vide order dated 17.02.2014.

6. The defendant, aggrieved by the order on I.A.No.II and dismissal of appeal in R.A.No.97/2012, filed this regular second appeal.

7. Heard the learned counsel for the defendant and also learned counsel for the plaintiff.

8. Learned counsel for the defendant submits that the defendant has filed an appeal. There is a delay of 90 days in preferring an appeal and the defendant has shown a sufficient cause for not preferring an appeal within time. While considering an application for condonation of delay, the Court should be liberal and to buttress his argument has placed reliance on the judgment of the Hon'ble Apex



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Court in the case of **THE COLLECTOR LAND ACQUISITION, ANANTNAG & ANOTHER VS. MST. KATIJI & ORS.** reported in **AIR 1987 SC 1353**. He submits that the First Appellate Court has rejected I.A.No.II on hyper technical ground. He submits that the suit involves the huge amount of money. The First Appellate Court ought to have condoned the delay in preferring an appeal. On the contrary, has rejected I.A.No.II. He submits that the order passed by the First Appellate Court rejecting I.A.No.II is in contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of **MST. KATIJI** (Supra). Hence, on these grounds, he prays to allow the appeal.

9. *Per contra*, learned counsel for the plaintiff submits that there is a delay of 90 days and the defendant has not shown a sufficient cause for condoning the delay. He submits that there is no rebuttal evidence on I.A.No.II. He submits that the First Appellate Court was justified in rejecting I.A.No.II and consequently, dismissed the appeal



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as barred by limitation. Accordingly, he prays to dismiss the appeal.

10. Perused the records and considered the submissions of the learned counsel for the parties.

11. This Court, vide order dated 22.08.2014 admitted the appeal to consider the following substantial question of law:

"When the appellant had putforth sufficient cause to condone the delay of 90 days in filing the appeal before the First Appellate Court, whether the first appellate court was justified in rejecting his application without recourse to the legal principles and a liberal approach to the cause putforth by the appellant and thereby committed an illegality in rejecting the application and the appeal?"

12. **Reg. Substantial question of law:** The plaintiff filed a suit for recovery of money. The defendant appeared and filed a written statement and both the parties have lead the evidence. The trial Court, after full-



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fledged trial, partly decreed the suit of the plaintiff vide judgment dated 13.04.2012 and held that the plaintiff is entitled to recover a sum of Rs.8,19,516/- with interest at the rate of 10% per annum from the date of institution of suit till the realisation of the amount from the defendant. The defendant, aggrieved by the judgment and decree passed in O.S.No.296/2007 preferred an appeal in R.A.No.97/2012 along with an application for condonation of delay i.e., I.A.No.II, wherein the defendant has contended that, in support of an application, filed an affidavit stating that after obtaining the certified copy of the judgment and decree passed by the trial Court, the defendant was making efforts to seek indulgence of Sri N.V.Hegde to consider his contention sympathetically. Therefore, the defendant was not intending to prefer any appeal. Even after obtaining the certified copy of the judgment and decree passed by the trial Court, the present appeal was filed on 05.09.2012. During these four months period, the defendant has sent two letters to the



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N.V.Hedge, which was properly replied by him. The last reply from his N.V.Hedge is dated 19.07.2012. Hence, for the said reason, the defendant could not file an appeal well within time. The defendant has raised several grounds in the appeal memo and also in the affidavit accompanying the I.A.No.II. In support of an application, the plaintiff was examined as PW1 and got marked four documents i.e. Ex.D1 is the copy of the letter addressed to the president, Ex.P2 is the reply from the president of plaintiff- trust, Ex.P3 is the copy of the letter addressed to the President of petitioner-trust on 06.07.2012 and Ex.P4 is the letter written by President of the plaintiff-trust on 19.07.2012.

13. Admittedly, from the perusal of the records, it clearly disclosed that, the defendants have made an attempt to settle the *lis* between the plaintiff and the defendant. Hence, for the said reason, there was a delay in filing an appeal before the First Appellate Court. In view of the proposition of law laid down by the court in the case



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of **MST. KATIJI** (Supra) held that while considering an application for condonation of delay, the Court must be liberal. The First Appellate Court without considering an application i.e. I.A.No.II has adopted hyper technical and rejected I.A.No.2. The impugned order passed by the First Appellate Court is in contrary to the proposition of law laid down by the Hon'ble Apex Court in the case of **MST. KATIJI** (Supra). Hence, on these grounds, the impugned order on I.A.No.II and consequently, dismissal of appeal are liable to be set aside.

14. In the view of the above discussion, I answer substantial question of law in the negative.

15. Accordingly, I proceed to pass the following:

ORDER

i. The Regular Second Appeal is ***allowed.***



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- ii. Order on I.A.No.II dated 17.02.2014 passed by the First Appellate Court is set aside and consequently, I.A.No.II filed by the appellant is allowed. Delay in filing the First Appeal is condoned.
- iii. R.A.No.97/2012 is restored to its original fine.
- iv. The First Appellate Court is directed to dispose of the appeal on merits.
- v. The parties are directed to appear before the First Appellate Court on **12.10.2026** without awaiting any further notice.
- vi. The Registry is directed to transmit the records to the First Appellate Court.
- vii. It is made clear that this court has not made an adjudication on merits in issues.
- viii. All the contentions of the parties are kept.

Sd/-
(ASHOK S.KINAGI)
JUDGE

SSB