



NC: 2026:KHC:21831-DB
MFA No.6615 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE RAJESH RAI K

MISCELLANEOUS FIRST APPEAL NO.6615 OF 2025 (IDA)

BETWEEN:

SRI ARUN JOEL D'SOUZA
S/O GEORGE D'SOUZA
AGED ABOUT 45 YEARS
R/AT No.2/167, KEPULU, SANOOR
KARKAL TALUK, VTC SANOOR
PO SANUR, KARKALA, UDUPI- 574 114
ALSO PUTHIGE VILLAGE, MITHABAIL POST
MOODBIDRI, MANGALURU TALUK
DAKSHINA KANNADA DISTRICT- 574 114

...APPELLANT

(BY SRI K.PRASAD, ADVOCATE)

AND:

SMT.PRAMILA JANE ROADRIGUES
W/O ARUN JOEL D'SOUZA
D/O B.P.RODRIGUES
AGED ABOUT 38 YEARS
R/AT KONNEPADAVU HOSABETTU
MANGALURU TALUK
DAKSHINA KANNADA-574 227

...RESPONDENT

(BY SRI K CHANDRANATH ARIGA, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 55 OF INDIAN DIVORCE ACT PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 05.03.2016 PASSED IN M.C.NO.281/2015 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, D.K. MANGALURU, ALLOWING THE PETITION FILED U/S.10 (1)(ix) AND (x) OF INDIAN DIVORCE ACT.

Digitally
signed by
KAVYA G
Location:
High Court of
Karnataka



THIS MISCELLANEOUS FIRST APPEAL COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
and
HON'BLE MR. JUSTICE RAJESH RAI K

ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE JAYANT BANERJI)

Heard learned Counsel for the appellant and learned Counsel for the respondent.

2. I.A.No.1/2025 is filed under Section 5 of the Limitation of Act, 1963 seeking condonation of delay of 2660 days in filing the appeal. In the affidavit filed in support of the application, it is stated as follows:

"AFFIDAVIT

I, Sri. Arun Joel D'Souza, S/o. George D'Souza, Aged about 45 years, R/at 2/167, Kepulu, Sanoor, Karkal Taluk, VTC Sanoor, PO Sanur, Karkala, Udupi, Pin Code 574114, today at Bengaluru, Do Hereby Solemnly Affirm And State On Oath As Follows:-

1. I am the appellant in the above appeal. I know the facts and circumstances of the case. Hence, swearing to this affidavit.

2. That the present appeal is filed challenging the order dated 05/03/2016 passed by the HON'BLE PRINCIPAL JUDGE, FAMILY COURT, AT D.K. MANGALURU in M.C.No.281/2015 whereby allowing the Respondent's petition filed against me under section 10 (ix) & (x) of Indian Divorce Act is hereby allowed and the Marriage solemnized on 18/04/2009 at HOLY ROSARIO CHURCH, Alangar, Moodbidri, Mangaluru Taluk, and directing the Petitioner (Respondent) to pay Rs.20,00,000/- as permanent Alimony within three months from the date of Judgment and Rs.20,000/- as litigation expenses to the Respondent (Petitioner).



3. I submit that, I have been gone out of station and working in Dubai/UAE, and I was hardly coming to India and was hardly in touch with family members since my marriage i.e., from the year 2010, and due to Respondent behavior and demand I had been living far from my mother and other relatives and later to had left to DUBAI/UAE for work purpose and used to occasionally come to India and was not aware of the said Case initiated against Me. With the result, as I came to know about the case only in the year 2025 i.e., on 07/04/2025 when a Warrant was tried to be executed on me and I could not come to know that the case against me had been placed Ex-parte. Hence, the case could not be contested by Me and defend the same in the time allowed under the law. Under these circumstances, I was unable to file the above appeal; however, an RPFC petition was been filed before this Hon'ble Court in RPFC No.188/2025; however, the said petition was disposed of for statistical purposes i.e., on maintainability, and the Hon'ble Single Judge was also pleased to grant liberty to file an appropriate appeal, thus the accompanying appeal is been filed and thus with this fact I pray to consider the accompanying application as the respondent is trying to get the appellant arrest in Ex No. 42/2023, pending on the file of Sr.Civil Judge and JMFC, Moodbidri, Dakshina Kannada. Under these circumstances, I was unable to file the above appeal and the said delay is not intentional but for the bonafide reason stated above. Hence the accompanying application by way of caution. The Certified copy of the order made IN RPFC No.188/2025 is herewith produced along with the affidavit for kind perusal of this Hon'ble Court.

4. I submit that the Delay in filing this accompanying appeal is not intentional and for bona fide reasons.

6. I submit that I have a good case on the merits to succeed in this appeal, and if the accompanying application is not allowed as prayed for, and if the delay is not condoned, and if I am not permitted to file the above case, I would suffer untold hardship and inconvenience.

WHEREFORE, I pray that this Hon'ble Court may be pleased to grant an interim order as prayed for, in the interest of justice and equity.

Bengaluru,
Date 1/9

Sd/-
DEPONENT
(ARUN JOEL D'SOUZA)

Identified by me
Sd/-
Advocate"



3. Today another affidavit of the proposed appellant/applicant is filed in which it is stated as follows:

"AFFIDAVIT

I, Sri. Arun Joel D' Souza S/o George D' Souza, aged about 45 years, Residing at No.2/167, Kepulu, Sanoor, Karkal Taluk, VTC Sanoor, PO Sanur, Udupi, PIN-574114, at Udupi, do hereby solemnly affirm and state on oath as follows:

1. I am the appellant in the above appeal. I know the facts and Circumstances of the case. Hence swearing to this Affidavit.
2. That the present appeal is filed challenging the order dated 05/03/2016 passed by the HON'BLE PRINCIPAL JUDGE, FAMILY COURT, AT MANGALURU IN M.C.281/2015 whereby allowing the Respondent's petition filed against me under section 10(XI) & (X) of Indian Divorce Act is hereby allowed and the Marriage solemnised on 18/04/2009 at HOLY ROSARIO CHURCH, Alangar, Moodbidri, Mangalore Taluk and directing the petitioner (Respondent) to pay Rs.20,00,000/- as permanent alimony within three months from the date of Judgement and Rs.20,000/- as litigation expenses to the Respondent (Petitioner).
3. That I submit that I was out of station, on presence of me there was an order sought against me, when I was working in Qatar, from 2012 to 2018 wherein I have filed a case against the respondent i.e., M.C.39/2011 which is partly allowed, before I went for Qatar on work purpose as a driver for which I have produced the document following Driving license and Passport copies on dtd: 08/12/2025 in IA.1/2025 Application under Order 41 Rule 27 R/W Section 151 of Civil Procedure Code which is for kind perusal, in the present Appeal.
4. That I submit where in the copy of the Trial court record in M.C.281/2015 the IA filed by this respondent (Petitioner) where she files the Application Under Order V Rule 9(3) of the Civil Procedure Code, for service of summons by transmission through electronic mail service to the address of mine (Respondent) in the above said email. ID needed to be verified with the thorough inspection, wherein the above said E-mail ID are not proper and the passport



issued by me are to be thoroughly inspected, where I was there in the country of Qatar company called N-KOM (NIKILT-KEPPEL OFFSHORE Qatar) not in the company of (Charterwings International Office SHARJAH) the company where I was working is different from the company mentioned in the affidavit of the application, which is not true and correct, the company which is mentioned in the application is not known to me. Indeed the E-Mail ID is not proper and company which is mentioned is not known to me, those were mentioned to mislead the Hon'ble trial court to take the necessary order against me to grant the order in their favour with the absence of mine.

5. That in the above said application there is no such affidavit, only Memorandum of facts was filed with no cogent evidence to prove that the company mentioned in the above application and Memorandum of facts, to be proven with thorough inspection. Where it prevents my right to contest the above petition in M.C.No.281/2015.

Wherefore I humbly prays this Hon'ble Court to accept my affidavit for thorough inspection for allowing the present M.F.A No.6651/2025 and also prays for the allow the appeal as sought for.

I declare that the contents of this affidavit are all true and correct to the best of my knowledge, information and belief.

Identified by me
Sd/-
Advocate

Sd/-
Deponent

Place: Bangalore
Date: 21/04/2026"

4. In the counter affidavit filed against the application for condonation of delay, it is stated that the appeal is purely an afterthought and it is an abuse of the process of law. It is stated that the ground stated in the affidavit filed in support of



the delay condonation application are neither true nor sufficient. Most of the explanations are false and lack *bona fide*.

5. It is stated that the appellant himself filed a petition against the respondent in the year 2011 in M.C.No.39/2011 and has falsely averred that he was out of India from the year 2010. The aforesaid M.C.No.39/2011 was filed against the respondent before the jurisdictional Court of the Senior Civil Judge and A.C.J.M., Karkala seeking a divorce on the ground of desertion and cruelty.

6. It is stated that thereafter, the respondent was constrained to file M.C.No.14/2013 before the very same Court seeking a decree of divorce on the ground of desertion and cruelty. It is pertinent to mention here that the case was transferred to the Family Court, Mangalore, where it was re-numbered as M.C.No.281/2015.

7. For execution of the decree passed in M.C.No.14/2013, the respondent filed Execution Case No.46/2016. However, the appellant remained absent and contested the petition in proxy through his mother and ultimately the execution case was transferred to the newly



established Court of the Senior Civil Judge and J.M.F.C., Moodabidri and it was re-numbered as Execution Petition No.42/2023.

8. The rejoinder has been filed by the appellant to the counter affidavit filed by the respondent in which it is stated that the petition filed by the proposed appellant being M.C.No.39/2011 was dismissed on 05.01.2013 for non-prosecution. It is stated that the appellant did not have any information about the new case which was filed against him in 2013. He has never received any notice from the Court nor had any information about the case by e-mail also. He was working abroad and he did not know to whom the e-mail was sent.

9. It is pertinent to mention here that perusal of the trial Court record reflects that I.A.No.2 dated 03.10.2015 was moved on behalf of the respondent under Order V Rule 9(3) of CPC specifying two e-mail addresses purportedly belonging to the proposed appellant. They were "asparun @ gmail .Com" or "arun@icsuae.com." On record are the e-mails sent by the Family Court, Mangalore in M.C.No.281/2015 to "asparun" and "arun". As far as the e-mail in 'arun' is concerned, there is a



response from the mail delivery subsystem that the delivery to the recipient failed. However as far as e-mail to 'asparun' is concerned, there is no such delivery failure response mentioned therein.

10. It is pertinent to mention here that in none of the affidavits filed by the proposed appellant has it has been stated that the e-mail "asparun@gmail.com" is not the e-mail address of the appellant. In paragraph No.4 of the affidavit of the appellant filed today, it is mentioned as follows:

"4. That I submit where in the copy of the Trial court record in M.C.281/2015 the IA filed by this respondent (Petitioner) where she files the Application Under Order V Rule 9(3) of the Civil Procedure Code, for service of summons by transmission through electronic mail service to the address of mine (Respondent) in the above said email. ID needed to be verified with the thorough inspection, wherein the above said E-mail ID are not proper and the passport issued by me are to be thoroughly inspected, where I was there in the country of Qatar company called N-KOM (NIKILT-KEPPEL OFFSHORE Qatar) not in the company of (Charterwings International Office SHARJAH) the company where I was working is different from the company mentioned in the affidavit of the application, which is not true and correct, the company which is mentioned in the application in not knowing to me.Indeed the E-Mail ID is not proper and company which is mentioned is not known to me, those were mentioned to mislead the Hon'ble trial court to take the necessary order against me to grant the order in their favour with the absence of mine."

11. Evidently the affidavit of the proposed appellant is evasive as regards the e-mail address and as regards the



receipt of the e-mail from the Family Court to the proposed appellant.

12. For the reason aforesaid, we do not find that there is any sufficient cause reflected on part of the proposed appellant for condonation of the delay. I.A.No.1/2025 is accordingly rejected. Since I.A.No.1/2025 is rejected, the appeal stands dismissed and the record is consigned.

Sd/-
(JAYANT BANERJI)
JUDGE

Sd/-
(RAJESH RAI K)
JUDGE