

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF JANUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE JAYANT BANERJI

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

O.S.A.NO.6/2025

BETWEEN:

OFFICIAL LIQUIDATOR OF
M/S. KIRLOSKAR INVESTEMENTS
AND FINANCE LTD., (IN LIQUIATION) ,
'CORPORATE BHAVAN,
12TH FLOOR, RAHEJA TOWERS,
NO.26-27, M.G.ROAD,
BENGALURU-560 001.

...APPELLANT

(BY SMT. KRUTIKA RAGHAVAN, ADVOCATE)

AND:

1. MR.M.C.SOMASHEKAR,
S/O LATE P.M.CHANNABASAVANNA,
#14, KALIDASA ROAD,
MYSURU-570 002.
2. MRS.M.C.SWARNALATHA,
D/O LATE P.M.CHANNABASAVANNA,
B 204, WHISPERING MEADOWS,
1ST MAIN ROAD, DOLLARS COLONY,
RMV 2ND STAGE, BENGALURU-560 094.
3. MRS.M.C.MOHANAKUMARI,
D/O LATE P.M.CHANNABASAVANNA,
#20, GAGANACHUMBI,
DOUBLE ROAD, KUVEMPUNAGAR,
MYSURU-570 023.

4. MR.M.C.MALLIKARJUN,
S/O LATE P.M.CHANNABASAVANNA,
#53/A, II CROSS,
KALIDASA ROAD,
JAYALAXMIPURAM
MYSURU-570 012.

...RESPONDENTS

(BY SRI. G.S. PRASANNA KUMAR, ADVOCATE R1 TO R4)

THIS OSA IS FILED UNDER SECTION 483 OF THE COMPANIES ACT, 1956 READ WITH SECTION 4 OF THE KARNATAKA HIGH COURT ACT, 1961, AND RULES 6 AND 9 OF THE COMPANIES (COURT) RULES 1959, PRAYING THIS HON'BLE COURT TO (A) SET ASIDE THE IMPUGNED ORDER DATED 18.09.2025 PASSED IN CA 326/2021 C/W CA 419/2022; (B) ALLOW THE PRAYERS SOUGHT BY THE APPLICANT / APPELLANT IN CA 419/2022 BY DIRECTING THE RESPONDENTS HEREIN TO CO-OPERATE IN THE MUTATION OF TITLE IN FAVOUR OF THE COMPANY IN LIQUIDATION AND ETC.,

THIS OSA HAVING BEEN HEARD ON I.A.No.3/2025 FILED FOR CONDONATION OF DELAY ON 05.01.2026, AND RESERVED, COMING ON FOR ORDERS ON I.A.NO.3/2025, THIS DAY, **JAYANT BANERJI J.**, MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE JAYANT BANERJI
AND
HON'BLE MR. JUSTICE T.M.NADAF

CAV ORDER

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

ORDER ON IA NO.3/2025

Heard learned counsel for the applicant on I.A.No.3/2025.

2. The aforesaid appeal has been filed on 07.11.2025 under Section 483 of the Companies Act, 1956 read with Section 4 of the Karnataka High Court Act, 1961, and Rules 6 and 9 of the Companies (Court) Rules, 1959, seeking to (a) set aside the impugned order dated 18.09.2025 passed by the learned Single Judge in C.A. No.326 /2021 connected with C.A. No.419/2021; and, (b) allow the prayers sought by the applicant in C.A. no.419/2021 by directing the respondents to cooperate in the mutation of title in favour of the Company in liquidation.

3. The office had raised objection, inter alia, that no application had been filed for condonation of delay. The counsel submitted before the Registry that I.A. for condonation of delay is not required as per Chapter VI-A, Rule 6 of the High

Court of Karnataka Rules, 1959¹, the rules applicable to RFA shall apply to OSA. As such, the period of limitation is 90 days and the appeal/OSA has been filed within limitation. Therefore, the matter was placed before the Court on 01.12.2025 for orders on the office objections.

4. On 01.12.2025 the learned counsel for the respondents raised an objection of limitation stating that, in view of the provision of Article 117 of the Schedule to the Limitation Act, 1963 read with Section 483 of the Companies Act, 1956² in light of Chapter VI-A of the HCK Rules, the period of limitation would be 30 days. The learned counsel for the Official Liquidator³ sought adjournment to study the matter.

5. On 08.12.2025 an application was filed on behalf of the OL seeking condonation of delay. It was supported by an affidavit of the OL in which it has been stated that the appeal was filed on 07.11.2025 being aggrieved by the impugned order dated 18.09.2025 passed by the learned Company Judge

¹ HCK Rules

² Act, 1956

³ OL

in Company Application No.326/2021 connected with Company Application No.419/2022.

6. It is stated that the delay in filing the appeal was due to the time taken in procuring and collating the additional documents, as the records are very voluminous and it was very difficult to trace the relevant files and the documents surrounding the present matter. The order for winding up of the Company in liquidation was passed by this Court on 24.12.2010 and tracing and retrieving the relevant files required considerable time in preparing the instant OSA. There are, approximately 45000 deposit holders to whom the Company in Liquidation is indebted and the OL is duty bound to protect the interest of those stakeholders.

7. It has been contended by the learned counsel for the OL that, it was a practice of the OL to file an appeal before this Court relying upon the Article 116 of the Schedule to the Limitation Act, 1963, and accordingly the appeal was filed believing the limitation to be 90 days. It is stated that earlier, in view of the limitation prescribed under Article 116, it was the practice of the OL to file such appeals within 90 days. Therefore the Official Liquidator was under the bona fide belief

that the period of limitation would be 90 days from the date of the decree or order and not 30 days.

8. However, the learned counsel for the OL conceded that, given the objection being raised by the learned counsel for the respondent, and after thorough study of the matter, it would be Article 117 of the Limitation Act that would apply to proceedings under Section 483 of the Act, 1956.

9. In the statement of objections filed on behalf of the respondents to the aforesaid Interlocutory Application seeking condonation of delay, it has been stated that no due diligence has been shown by the appellant after passing of the judgment. The appellants have taken it in a very casual manner and therefore they are not entitled for condonation of delay. It is stated that the judgment was pronounced by the learned Single Judge on 08.09.2025 and the judgment was scanned on 23.09.2025. The respondent received the copy on 24.09.2025 itself. It is stated that, on the contrary, the appellants applied for the copy on 04.11.2025 and obtained a copy on 06.11.2025. As such, there is more than 41 days of delay in preferring the above appeal. It is stated that therefore, the application seeking 20 days delay condonation,

is not in accordance with law. It is stated that obtaining a certified copy after limitation is unexplained in the affidavit of the Official Liquidator. Non-availability of additional documents would not come in the way of obtaining certified copy of the impugned order.

10. It is stated that the number of cases being handled by the OL cannot be a reason for condonation of delay; the appeal memo was not accompanied by any application seeking condonation of delay in view of Order 41 Rule 1(3)⁴ read with Rules 7 & 8 in Chapter VI of the HCK Rules. In the absence of such an application, the appeal itself is not maintainable in law and consequently, the I.A. for stay is also not maintainable. The subsequent filing of an application for condonation of delay would also not cure the defect in non-filing along with the appeal. It is stated that the present application for condonation of delay is only an attempt to cure the defect which goes to the root of the appeal.

11. Learned counsel for the respondent opposes the aforesaid I.A. on the ground that under the provisions of Article 117 of the Limitation Act, the period for filing the OSA

⁴ Karnataka amendment

under Section 483 of the Act, 1956, would be 30 days from the date of the decree or order. It is stated that there is no explanation given in the affidavit filed in support of the aforesaid I.A., as to why there was a delay in applying for the certified copy of the impugned judgment dated 18.09.2025, after nearly a period of two months on 04.11.2025.

12. It is further stated that non-availability of additional documents has been cited as a reason for not preferring the appeal within time, whereas I.A.No.1/2025, which is an I.A. for filing additional documents, does not enclose any of the documents cited therein. Another submission of the learned counsel for the respondent is that, in view of the provisions of Chapter VI, Rule 7 and 8 of the HCK Rules, read in conjunction with Sub-rule (3) (Karnataka Amendment) of Rule 1 of Order XLI, of the CPC as well as Rule 3A of Order XLI, there exists a mandate for filing of an application for condonation of delay along with the appeal. His contention is that there being a delay in filing the appeal, there is no appeal unless the delay is condoned and therefore the date of filing the application for condonation of delay i.e., I.A.No.3/2025 would be the relevant date on which the appeal would be deemed to have been filed.

13. Learned counsel for the respondent in support of his contention has relied upon a Division Bench judgment of the High Court of Jharkhand in Tax Appeal No.14/2020 dated 09.07.2024 and High Court of Karnataka in ILR 1993 KAR 1323 to contend that subsequent filing of the appeal, an application for condonation of delay cannot cure the defect of not filing the delay condonation application along with the appeal memo.

14. The provisions of Articles 116 and 117 of the Limitation Act are as under:-

Description of suit	Period of limitation	Time from which period begins to run
116. Under the Code of Civil Procedure, 1908 (5 of 1908)—		
(a) to a High Court from any decree or order.	Ninety days.	The date of the decree or order.
(b) to any other court from any decree or order.	Thirty days.	The date of the decree or order.
117. From a decree or order of any High Court to the same Court.	Thirty days.	The date of the decree or order.

15. Chapter VI-A of the HCK Rules relates to OSA. Rule 6 therein provides that subject to the provisions of this Chapter, the Rules applicable to Regular First Appeals and the provisions of Order 41 and 41-A of the CPC shall, as far as

may be, apply to OSAs. Order 41 Rule 1, sub-Rule (3) [Karnataka High Court Amendment] reads as follows:

"ORDER XLI

APPEALS FROM ORIGINAL DECREES

1. *Form of appeal. What to accompany memorandum:*

(1) & (2) xxx xxx xxx xxx xxx

(3) When an appeal is presented after the period of limitation prescribed therefore it shall be accompanied by an application supported by affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period, and the Court shall not proceed to deal with the appeal in any way (otherwise than by dismissing it either under rule 11 of this Order or on the ground that it is not satisfied as to the sufficiency of the reason for the delay) until notice has been given to the respondent and his objections, if any, are heard."

The aforesaid sub-Rule (3) of High Court Amendment was added by notification dated 16.10.1959.

16. Rule 3-A was inserted in Order 41 CPC by the 1976 Amendment, which reads as follows:-

"3A. Application for condonation of delay.

(1) When a appeal is presented after the expiry of the period of limitation specified therefor, it shall be accompanied by an application supported by

affidavit setting forth the facts on which the appellant relies to satisfy the Court that he had sufficient cause for not preferring the appeal within such period.

- (2) *If the Court sees no reason to reject the application without the issue of a notice to the respondent, notice hereof shall be issued to the respondent and the matter shall be finally decided by the Court before it proceeds to deal with the appeal under rule 11 or rule 13, as the case may be.*
- (3) *Where an application has been made under sub-rule (1) the Court shall not made an order fact the stay of execution of the decree against which the appeal is proposed to be filed so long as the Court does not, after hearing under rule 11, decide to hear the appeal."*

17. Therefore, sub-Rule (3) of Karnataka High Court Amendment to Rule 1 of Order 41, and Rule 3-A of Order 41 are largely *pari materia*. The provision requires that an appeal presented after the period of limitation specified therefor, shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within such period.

18. Though the word 'shall' is used in the aforesaid provisions, the same will have to be seen in the light of the facts and circumstances of a particular case. In the judgment of **M.V. "Vali Pero" v. Fernando Lopez**⁵, the Supreme Court has observed as follows:-

"18. Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction, must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice. Where the outcome and fairness of the procedure adopted is not doubted and the essentials of the prescribed procedure have been followed, there is no reason to discard the result simply because certain details which have not prejudicially affected the result have been inadvertently omitted in a particular case. In our view, this appears to be the pragmatic approach which needs to be adopted while construing a purely procedural provision. Otherwise, rules of procedure will become the mistress instead of remaining the handmaid

⁵ (1989) 4 SCC 671

of justice, contrary to the role attributed to it in our legal system.

19. In this case, none disputes the correctness and authenticity of the depositions recorded on commission but there is omission of witness' signature thereon. The question is: does reception of these depositions in evidence violate Rule 4 ibid in a manner which is impermissible or this omission can be overlooked as insignificant since correctness and authenticity of the depositions is undisputed ? We have no doubt that cause of justice would be served instead of being thwarted and the avowed object of Rule 4 ibid achieved by treating it to be an insignificant omission in the present case.

20. The consequence of failure to comply with any requirement of Rule 4 ibid is not provided by the statute itself. Accordingly, the consequence has to be determined with reference to the nature of the provision, the purpose of its enactment and the effect of the non-compliance. Rule 4 uses the word "shall" even while requiring the signature of the witness as it uses the word "shall" in respect of the other requirements of the rule. Ordinarily, the word "shall" used at several places in Rule 4 must be given the same meaning at all places. However, it is also settled that this is not an invariable rule and even though the word "shall" is ordinarily mandatory but in the context or if the intention is otherwise it may be construed to be merely directory. In short, the construction ultimately depends on the provision itself keeping in view the intendment of the enactment and the context in which the word "shall" has been used.

21. *It would suffice, to refer only to the decision in Ganesh Prasad Sah Kesari v. Lakshmi Narayan Gupta [(1985) 3 SCC 53]. The word "shall" was used therein in connection with the court's power to strike off the defence against ejectment in a suit for eviction of tenant in case of default in payment of rent. This Court construed the word "shall" in that context as directory and not mandatory since such a construction would advance the purpose of enactment and prevent miscarriage of justice. In taking this view, this Court was impressed by the fact that the default attracting the drastic consequence of striking out defence may be only formal or technical and unless the provision was treated as directory, it would render the court powerless even where striking out the defence may result in miscarriage of justice. We may refer to a passage from Crawford on Statutory Construction [1940 Edn., Article 261, p. 516] which was quoted with approval in Govindlal Chagganlal Patel v. Agricultural Produce Market Committee, Godhra [AIR 1976 SC 263] and relied on in this decision. The quotation is as under:*

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design, and the consequences which would follow from construing it the one way or the other."

22. *It cannot, therefore, be doubted that the word "shall" used in the expression "deposition shall be signed by*

witness" in Rule 4 *ibid* has to be given the meaning keeping in view the intention of the legislature, the purpose of the enactment and the consequence which would follow from construing it as mandatory or directory.

23. If the word "shall" used in this expression is construed as mandatory, non-compliance of which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness' signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word "shall" used in this expression is treated as directory, the court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be advanced by taking this view and thereby empowering the court to avoid the drastic consequence of nullifying the deposition where the correctness and authenticity is undisputed. In a case where the correctness has been disputed, it would be permissible for the court to examine the effect of omission of the witness' signature and to reject the deposition only if it does not accept the correctness and authenticity thereof on the available material."

19. In the case of ***Union of India v. A.K. Pandey***⁶, ,
the Supreme Court held as follows:-

⁶ (2009) 10 SCC 552

"15. The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive. The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. When the word "shall" is followed by prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such.".

20. In the context of the aforesaid cited cases, the aforesaid provisions of sub rule (3) (Karnataka amendment) of Rule 1 of Order 41 of the CPC, as well as the provision of Order 41 Rule 3 of the CPC are to be seen. The word "shall" followed by the words "be accompanied by an application supported by an affidavit...." appearing in the provisions is not followed by prohibitive or negative words. The consequence of failure of the appeal being accompanied by an application supported by an affidavit is not provided by the CPC itself. The consequence that would be meted out for not demonstrating 'sufficient cause' is set out in Section 3 of the Limitation Act.

21. However, there can be a case where an aggrieved party may file a defective appeal, that is to say an appeal filed beyond the prescribed period of limitation, and the matter is kept pending indefinitely without any notice to the Respondents for want of an appropriate application supported by an affidavit for satisfying the court that she had sufficient cause for not filing the appeal within limitation. In such a case, the Respondent would be without any information about pendency of the appeal. The Respondent may even alter his position during the period between filing of the defective appeal, and, filing of the application/affidavit explaining sufficient cause. Such cannot be the intent of the procedure provided for filing the required application/affidavit along with an appeal presented after the expiry of the period of limitation under sub-Rule 3 (Karnataka amendment) of Rule 1 of Order 41 CPC or of Rule 3-A of Order 41 CPC. Apparently, the provisions were made with the intention so that an appeal filed beyond the limitation provided, should not be kept in the docket of the appellate court indefinitely as a defective appeal for want of the prescribed application supported by an affidavit. The aforementioned provisions of Order 41 CPC find echo in Rules 7 and 8 of Chapter VI of the HCK Rules.

22. Therefore any leeway or concession if provided to a party whose defective appeal is not accompanied by the prescribed application/ affidavit to file such application/ affidavit subsequently, may lead to misuse and abuse of the procedure prescribed. Thus the procedure in Order 41 CPC that an appeal presented after the expiry of the period of limitation specified therefor, 'shall' be accompanied by an application supported by an affidavit setting forth the facts on which the Appellant relies to satisfy the court that she had sufficient cause for not preferring the appeal within such period, should be given its full effect. However, that does not mean that in case such an appeal which is filed after the prescribed period of limitation without it being accompanied by the requisite application/affidavit envisaged under Rule 1 and Rule 3-A of Order 41 CPC, should meet the drastic consequence of being rejected for non-compliance of a procedural requirement. As noted above, the consequences are meted out by Section 3 of the Limitation Act.

23. The question that now crops up is that what would be the consequence of delay in filing of the aforesaid application/affidavit. Is such a defect curable? Learned counsel for the respondent has argued that the appeal would be

deemed to have been filed on the day when such application/affidavit is filed. However, we do not intend to go into the aspect of whether any legal fiction is to be construed. What is of importance is that the reason for the delay in filing the application with affidavit should be explained therein to the satisfaction of the court that there was sufficient cause for not preferring the appeal or making an application within the prescribed period. This is the intendment of Section 5 of the Limitation Act.

24. As noted above, admitted and evidently, the impugned order was pronounced by the learned Single Judge on 18.09.2025 and the certified copy of the impugned order was applied 04.11.2025. Therefore, given the provision of Article 117 of the Limitation Act, even the application for the certified copy of the impugned order was made well after thirty days of the date of order. There is no explanation for this delay. The discretionary power of a court to condone delay may not be exercised where there is negligence or want of due diligence. Section 5 can be construed liberally provided 'sufficient cause' in not filing the appeal/application within the prescribed period is shown to the satisfaction of the court. [See

*Pathapati Subba Reddy (Died) by LRs v. Special Deputy Collector (LA)*⁷ and *Shivamma (dead) by LRs v. Karnataka Housing Board*⁸]

25. In view of the aforesaid, we are not satisfied with the explanation offered to demonstrate sufficient cause for condoning the delay in filing the appeal.

26. The application for condonation of delay I.A. No.3/2025 is therefore, rejected. Since the I.A. is rejected the proposed appeal is consigned.

**Sd/-
(JAYANT BANERJI)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

KGR

⁷ (2024) 12 SCC 336

⁸ 2025 SCC Online SC 1969