NC: 2025:KHC:42870
RSA No. 1401 of 2023

HC-KAR

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2025

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BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

REGULAR SECOND APPEAL NO.1401 OF 2023 (DEC)

BETWEEN:

1. THE TAHASILDAR
   BENGALURU SOUTH TALUK
   KANDHAYA BHAVANA
   BENGALURU-560 009.

2. THE STATE OF KARNATAKA
   REPRESENTED BY ITS SECRETARY
   REVENUE DEPARTMENT
   M.S. BUILDING
   DR. AMBEDKAR VEEDHI
   BENGALURU-560 001.

...APPELLANTS

(BY SRI. KIRAN V. RON, AAG A/W.
SRI. S.H.RAGHAVENDRA, AGA)

AND:

1. SRI. RAMAIAH A.,
   S/O LATE ABBAIAH
   AGED ABOUT 82 YEARS
   R/AT NO.48
   PATTANAGERE VILLAGE
   KENGERI HOBLI
   BENGALURU SOUTH TALUK-560098.

...RESPONDENT

(BY SRI. KAMARAJU, ADVOCATE)

THIS RSA IS FILED UNDER ORDER XLII READ WITH SECTION 100 OF CPC, AGAINST THE JUDGEMENT AND DECREE DATED 09.12.2022 PASSED IN R.A.NO.84/2021 ON THE FILE OF II ADDITIONAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND DECREEING THE SUIT PASSED IN O.S.NO.94/2023 ON THE FILE OF ADDITIONAL II CIVIL JUDGE (JR.DN), BENGALURU RURAL DISTRICT, BENGALURU.

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

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

ORAL JUDGMENT

This matter is listed for 'Orders' and earlier this Court vide order dated 24.06.2025, condoned delay of 142 days in filing this second appeal before this Court and heard the appeal for admission and adjourned for production of rejection order of the Committee for grant of land filed under Form No.50 and today, the matter was heard. Insofar as admission is concerned, there was a delay of 6,658 days in filing the appeal before the First Appellate Court and the First Appellate Court passed a detailed order and rejected IA filed under Order XLI Rule 3A of Code of

Civil Procedure. Hence, the present second appeal is filed before this Court.

2. The factual matrix of case of plaintiff before the Trial Court while seeking the relief of declaration in O.S. No. 94 of 2003, it is pleaded that the plaintiff is in actual, physical, continuous, uninterrupted possession and enjoyment of 2 acres of land in Survey No. 11 of Pattanagere Village, Kengeri Hobli, Bangalore South Taluk, (hereinafter referred to as 'suit property'). It is the further case of the plaintiff that he is in possession of suit property, openly, publicly to the knowledge of the defendants and their subordinates since from more than 33 years and adverse to the title, ownership and interest of defendants Nos. 1 and 2.

3. It is contented that earlier his father was cultivating the suit property and subsequent to death of his father, he himself is in possession of the suit property and in the year 1991, the provisions are made under the Karnataka Land Revenue Act,1964 calling upon persons

who are in possession and cultivation of the Government Gomala land to file their application in prescribed Form No. 50 and accordingly the plaintiff has filed an application and the revenue authority simply kept the said application of the plaintiff pending. Hence, the respondent/plaintiff had filed a writ petition No.3574-3475 of 1996 before the High Court of Karnataka for issuance of direction against the defendants and the same came to be allowed and inspite of directions vide order dated 17.07.1998, the authorities have not taken any action and respondent/plaintiff was constrained to file contempt petition before the High Court in CCC No.19/2001.

4. It is also contented that all the revenue records discloses in the cultivator's column, referring the cultivation of the plaintiff as 'Bagar Hukum Saguvali' and inspite of direction given by the High Court, the appellant/State did not comply with the direction. Therefore, the suit is filed for relief of declaration and for permanent injunction. Inspite of service of suit

summons, defendants i.e., appellants herein failed to appear before the Trial Court and they were placed ex-parte. Hence, plaintiff led the evidence and the Trial Court considered the points for consideration that whether the plaintiff is entitled for declaration and permanent injunction in respect of the suit schedule property? The Trial Court after consideration of the evidence and documents which have been produced along with the evidence of PW1, i.e., the order passed in the said Writ Petition as well as order passed in CCC No.19 of 2001 and 88-89 of 2001, Pahani, notice issued by the Assistant Director of Land Records, certified copy of mahazar, Form No.50, endorsement, endorsement issued by the Tahasildar, grant certificate and affidavit, answered point No.1 as 'affirmative' and gave a finding that respondent/plaintiff has perfected his title and ownership and thereby he has become the owner of property in respect of the suit schedule property and injunction granted against defendant Nos.1 and 2, permanently restraining from interfering with plaintiff's peaceful

possession and enjoyment of the suit schedule property. Further, the appellant/State did not choose to challenge this decree immediately but filed Miscellaneous Petition before the Court under Order IX Rule IX in 2009 which came to be dismissed for non-prosecution in the year 2013. The appellant/State again kept quiet till 2019 and one more petition is filed i.e., Miscellaneous No.17 of 2019 after lapse of 6 years for restoration of earlier dismissal of petition No.26 of 2009. when the said petition is pending, the appellant/State has preferred an appeal before the First Appellate Court in RA No.84 of 2021 and a memo was filed in the Miscellaneous Petition No.17/2019 seeking permission to withdraw the petition and liberty to be given to prefer regular appeal. Thereafter, the First Appellate Court having considered delay of 6,658 days, came to conclusion that no proper explanation and sufficient cause was given to condone the said delay and passed a detailed order on 09.12.2022. Being aggrieved by this, the appellant/State has preferred this present Second Appeal.

5. The contention of learned AAG appearing for appellant/State is that the State officials were hand in glove with the respondents and hence appeal was not filed in time and he also submit that when the appellant/State came to know about the same, the action is initiated against the officials who indulge in such act and now charge is framed and enquiry is pending against the concerned officials who are in service as on today. Further, he vehemently contended that though there was a delay of 6,658 days, the First Appellate Court ought to have considered the appeal on merits.

6. The counsel in support of his argument relies upon the judgment of Hon'ble Apex Court in the case of ***Sheo Raj Singh (Deceased) through Legal Representatives and Others vs. Union of India and Another***[1] and draw the attention of this Court at Paragraph 35.3, wherein an observation is made that it is upon the Courts to consider the sufficiency of cause shown

[1] ***reported in (2023) 10 SCC 531***

for the delay, and the length of delay is not always decisive while exercising the discretion in such matters if the delay is properly explained. Further, the merits of a claim were also to be considered when deciding such application for condonation of delay.

7. The counsel also relied upon judgment of the Hon'ble Apex Court in the case of ***Executive Officer, Antiyur Town Panchayat vs. G. Arumugam (Dead) by Legal representatives***[2] wherein discussion was made with regard to Section 5 of Limitation Act and the counsel drew his attention of this court with regard to discussion made in paragraph No.4 that the court must always take a justice-oriented approach while considering an application for condonation of delay. If the Court is convinced that there had been an attempt on the part of the Government officials or public servants to defeat justice by causing delay, the court, in view of the larger public interest, should take a lenient view in such situations, condone the

[2] reported in (2015) 3 Supreme Court cases 569

delay, howsoever huge may be the delay, and have the matter decided on merits.

8. The counsel also relied upon the judgment of this Court in the case of ***the State of Karnataka represented by Revenue Secretary vs. H.B. Munivenkatappa***[3] and drew attention of this Court to paragraph No.30 onwards of the said judgment wherein the discussion is made that law of limitation is no doubt the same for private citizen as well as for the Government authorities. Government, like any other litigant must take the responsibility for the acts or omissions of its officers. But somewhat different complexion is imparted to the matter where Government makes out a case where public interest was shown to have suffered owing to the acts of fraud or bad faith on the part of its officers or agents and where the officers were clearly at cross-purposes with it.

9. The counsel also brought to notice of this court the observation made in paragraph No.31 that it is also a

[3] ILR 2007 KAR 1893

fundamental principle that a decree passed by the Court without jurisdiction is a nullity. Its validity can be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. The defect of jurisdiction whether it is technical or territorial or whether it is in respect of subject matter of action, strikes at the very authority of the Court to pass any decree and such defect cannot be cured even by consent of parties.

10. The counsel also draws attention of this Court with regard to discussion made in paragraph No.33 of the said judgment that the material on record discloses at every stage the persons who were entrusted with responsibility of protecting the public property have let down the Government. The way the litigation has been fought and the way the Government representatives and their counsel have let down the public interest, is shocking. When the matter was brought to the notice of Lokayuktha, it issued a clean chit to those officials saying

that the public interest has not suffered. There cannot be a worse situation than this. A mighty Government rendered helpless by such advice and breach of trust. If the order of the Land Reforms Tribunal exists as contented by the plaintiff, it is clear that the Assistant Commissioner who is the chairman of the Tribunal has failed to notice the aforesaid statutory provisions which confers no right to the vested land in the inamdar and the Tribunal to grant occupancy rights in respect of a tank bed. Having considered the material on record and discussion made by the Court, delay of 9 years 7 days in preferring the appeal was condoned while considering the Regular Second Appeal.

11. The counsel appearing for the appellant/State also relied upon the judgment in the case of ***State of Nagaland vs. Lipok Ao and Others***,[4] wherein also Section 5 of the Limitation Act was discussed with regard to the sufficient cause for condoning the delay, existence

[4] reported in (2005) 3 SCC 752

of and necessity of length of delay and held proof by sufficient cause is a condition precedent for exercise of the extraordinary discretion vested in the Court. What counts is not the length of the delay, but the sufficiency of the cause and shortness of the delay is one of the circumstances to be taken into account in using the discretion.

12. Per contra, the counsel appearing for respondent/plaintiff brought to notice of this court a detailed discussion made by the First Appellate Court in discussing with regard to delay is concerned and also the conduct of the State in pursuing the remedy before the Trial Court even after passing of judgment and decree. An attempt is made before the Trial Court by misleading the Appellate Court that the delay was only 2,937 days and not 6,658 days and the same was noticed in paragraph No.23 and so also taken note of in paragraph No.24 that a memo was filed before the Trial Court in Miscellaneous No. 17 of 2019 to file an appeal or to file a fresh petition and

the same was withdrawn on 12.11.2021. But the present appeal was filed on 12.10.2021. Further, the counsel taken note of the conduct of the State that the said memo was filed after lapse of 20 days of filing of the appeal and the same was discussed in paragraph No.25.

13. The counsel also brought to the notice of this Court that in paragraph No.26 that in spite of suit summons was served on the State in OS No. 94 of 2003, they have not filed any written statement or contested the matter and also no proper explanation was given and even Miscellaneous Petition was filed in the year 2009 i.e., after lapse of 6 years. Further, the said Miscellaneous Petition was also not properly conducted and the same was dismissed in the year 2013 itself and did not challenge the said order or filed any petition for restoration. Only in the year 2019, the appellant/State has filed one more Miscellaneous Petition after lapse of 6 years i.e. on 17.02.2019 and the same was also taken note of by the Trial Court. Further, he contends that in each and every

stage, the appellant/State has not shown any interest in pursuing the remedy available under law and also the First Appellate Court having considered the material on record, rightly comes to the conclusion that sufficient cause is not shown and properly explained the delay and it does not requires any interference of this Court.

14. The counsel in support of his argument also relied upon the recent judgment of the Hon'ble Apex Court in the case of ***Shivamma (Dead) by Lrs., vs. Karnataka Housing Board and others***,[5] by drawing attention of this Court to the discussion made in paragraph No.140, wherein the Apex Court held that the Courts must be mindful that strong case on merits is no ground for condonation of delay. When an application for condonation of delay is placed before the Court, the inquiry is confined to whether sufficient cause has been demonstrated for not filing the appeal or proceeding within the prescribed period of limitation. The merits of the underlying case are wholly

[5] reported in 2025 SCC Online SC 1969

extraneous to this inquiry. The purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable justification for the delay.

15. The counsel also brought to notice of this Court about the discussion made in paragraph No.141 of the said judgment with regard to sufficient cause that the condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigation with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out. This would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain.

16. Further he also brought to notice of this Court, the discussion made in paragraph No.142, wherein it is held that the judicial discipline required at this stage

demands that only the cause for delay be scrutinized, and nothing more. This ensures that the ultimate adjudication of rights occurs in a neutral and unprejudiced setting.

17. The counsel also brought to notice of this Court the discussion made in Paragraph No.256, that as far as the contention of respondent No.1 is concerned, approps to the merits of moulding of relief by awarding of compensation by the First Appellate Court, the same is squarely answered by the principles encapsulated in Pathapati Subba Reddy, wherein it is categorically maintained that Court considering a condonation of delay ought not to go into the merits of the case at hand.

18. The counsel also relies upon the judgment of the Hon'ble Apex Court in the case of ***General Manager Haryana Roadways vs. Jai Bhagwan and another***[6]***,*** wherein the discussion is made in paragraph No.13 of the said judgment with regard to suppression of material fact is viewed seriously by the superior courts exercising their

[6] reported in (2008) 4 SCC 127.

discretionary jurisdiction. Further, he also relied upon the judgment in the case of ***S.J.S. Business (P) Ltd. Vs. State of Bihar***, wherein at paragraph No.13, it is held that suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the courts to deter a litigant from abusing the process of court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.

19. The counsel also brought to notice of this court the discussion made in paragraph Nos.15 and 16 of the said judgment that the State was guilty of serious delay and laches, we, therefore, are of the opinion that suppression of fact of such a nature and that too at the instance of the State must be viewed seriously. Further, the counsel also relied upon the judgment of this Court passed in RSA No. 209 of 2007 and brought to notice of this Court the discussion made in paragraph No.24

wherein this Court placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Prabhakar Vs. Joint Director, Sericulture Department and Another reported in (2015) 15 SCC 1***, wherein discussion was made with regard to doctrine of laches and delay as well as doctrine of acquiescence and non-suited the litigants who approached the Court belatedly without any justifiable explanation for bringing the action after unreasonable delay. Doctrine of laches is in fact, an application of maxim of equity "delay defeats equities".

20. Further, the counsel brought to notice of this court the discussion made in paragraph No.25 of the judgment of this Court where this Court also placed reliance on the judgment of the Hon'ble Apex Court in the case of ***B.L. Sreedhar and Others vs. K.M. Munireddy (Dead) and Others reported in (2003) 2 SCC 355***, wherein the Hon'ble Apex Court, while discussing with regard to law of acquiescence, extracted para No.40 of illustrious book Estoppels and the Substantive Law under

the title "Conduct of indifference or Acquiescence, held that it is settled law that an estoppel may arise as against persons who have not wilfully made any misrepresentation, and whose conduct is free from fraud or negligence, but as against whom inference may reasonably have been drawn upon which others may have been inducted to act.

21. The counsel appearing for appellant/State in reply to this argument would vehemently contend that first of all, the Trial Court is not having any jurisdiction to grant the relief of declaration and also brought to notice of this Court by filing a memo stating that the claim made by respondent/plaintiff by filing an application i.e., Form No. 50 was rejected in 2003 itself and the same is suppressed by the respondent/plaintiff. Further, he also brought to notice of this Court that an attempt is also made by the respondent/plaintiff for phodi work and the same came to be dismissed vide order dated 27.08.2018. A copy was also served on the respondent/plaintiff.

22. The counsel appearing for respondent/plaintiff would submit that this Court can compare the signature available in the vakkalath filed by the respondent/plaintiff and the signature available in the endorsement dated 27.08.2018 is not the signature of the respondent/plaintiff and the same is created one. Further, he also submit that even the proceedings referred by the appellant/State dated 13.10.2003 wherein the State has rejected the application of the respondent/plaintiff and the same is not communicated to the respondent/plaintiff and no such decision was taken. The learned counsel also brought to notice of this court that in a miscellaneous proceedings filed before the Court in Misc. No.17 of 2019, the Tahasildar filed an affidavit stating that the application filed by the respondent/plaintiff is still pending for consideration. If this type of affidavit is filed by the Tahasildar, the memo along with documents No.1 and 2 filed upon by the appellant/State before this Court today, cannot be believed and considered. Further, no such documents are served on the respondent/plaintiff.

23. Having heard the arguments advanced by the counsels on either side and on perusal of material on record particularly the grounds urged in the memorandum of appeal, the point that would arise for consideration of this Court are:

> (1) Whether the First Appellate Court committed an error in rejecting the appeal by dismissing the application filed under Section 5 of Limitation Act, for condonation of delay of 6,658 days in filing the appeal?
>
> (2) What order?

24. Having heard the respective counsels and also the principles laid down in the Judgments referred supra by both the counsels, it is not in dispute that the respondent/plaintiff has approached the trial Court seeking the relief of declaration and permanent injunction as against appellant/State and also it is not in dispute that suit summons was issued against the appellant/State. Since appellant/State was arraigned as defendant Nos.1 and 2 before the trial Court in the said suit and in spite of

service of summons, the appellant/State did not choose to engage the counsel and contest the matter. The judgment and decree was passed on 29.08.2003 by the Trial Court and the same was an ex-parte judgment and decree.

25. It is the contention of the appellant/State that they came to know about the said judgment and decree only in the year 2009 and immediately they filed Miscellaneous Petition No.26 of 2009. Admittedly, the same came to be dismissed in the year 2013 and it is not decided on merits. It is also within the knowledge of the Appellant/State and even according to the arguments of learned AAG, that they came to know about the said judgment and decree in the year 2009 and filed the Miscellaneous Petition. The appellant/State has not even filed any application for restoration of Miscellaneous Petition which was dismissed in the year 2013. But the application for restoration was filed in the year 2019 after lapse of 6 years and the same is also for restoration. It is also settled law that even if any judgment is passed and

the same is ex-parte, there are two options to the aggrieved person either to invoke Order IX Rule 13 of CPC or to file an appeal. But no such appeal was filed by the appellant/State. Further, the appellant/State has filed earlier petition under Order IX Rule 9 and not under Order IX Rule 13 which came to be dismissed in 2013 itself.

26. It is also important to note that even when the second miscellaneous petition filed upon the miscellaneous petition already filed, i.e. Miscellaneous No. 17 of 2019 and when the same is pending for consideration, the appellant/State has preferred Regular Appeal No. 84 of 2021. After lapse of 18 years since judgment and decree was passed by the trial Court in OS No.94 of 2003 on 29.08.2003 and by that time, there was a delay of 6,658 days. No doubt the First Appellate Court while considering the aspect of delay, discussed in detail and the Counsel appearing for the State also brought to notice of this Court that an observation is made that even if the judgment of the Trial Court is restored and remitted back, the

Government will not pursue the matter and the said observation is made having taken note of the conduct of the State and even inspite of having the knowledge of judgment and decree passed in the year 2003, and not pursued the appropriate remedy. Miscellaneous petition was filed in the year 2009 and the same was not pursued in a proper manner. The same was dismissed in 2013 and even after dismissal of Miscellaneous Petition also, no steps were taken and again after lapse of 6 years, one more Miscellaneous Petition was filed. When such being the case, while considering the delay application, the Court has to take note of the conduct of State whether it is a State or a private party and law is also settled to that effect is concerned as one and the same and there cannot be two yardsticks whether it is a State Government or a private party.

27. The counsel appearing for the appellant/State brought to the notice of this Court the judgment of Hon'ble Apex Court in Sheo Raj Singh's case, Armugam's case

and also the judgment of this Court in the case of ***State of Karnataka represented by Revenue Secretary vs. H.B. Munivenkatappa***, wherein discussion was made with regard to condonation of delay of 9 years 7 days as well as 1373 days. Further, in the case of ***Arumugam*** and also in the case of ***Sheo Raj***, wherein explanation is made with regard to sufficient cause and the same has to be considered on merits.

28. The Hon'ble Apex Court in the recent judgment which is relied upon by the counsel appearing for respondent/plaintiff by drawing attention of this Court the discussion made at paragraph Nos.140 and 141 in Shivamma's case supra. The Hon'ble Apex Court also held that the Court has to take note of condonation of delay and sufficient cause and it must be mindful that strong case on merits is no ground for condonation of delay and purpose of Section 5 of the Limitation Act is not to determine whether the claim is legally or factually strong, but only whether the applicant had a reasonable

justification for the delay. The condonation of delay is a matter of discretion based on explanation for the delay, not on the prospects of success in the case. If merits are considered, a litigant with a stronger case may be favoured with condonation despite negligence, while a weaker case may be rejected even if sufficient cause is made out and this would lead to an inequitable and inconsistent application of the law, undermining the uniform standard that the doctrine of limitation is designed to maintain. Further, an observation is also made that judicial discipline required at this stage demands only the cause for delay be scrutinized and nothing more. This ensures that the ultimate adjudication of rights accrues in a neutral and unprejudiced setting and in view of above discussion not to consider the merits but sufficient cause.

29. It is also important to take note of the discussion made by the Hon'ble Apex Court in the very same judgment at paragraph No.188, held that however what is equally significant to note is that the aforesaid

observations of this Court in Chandra Mani and Lipok A.O. were accompanied by a clear message to the State and all its instrumentalities, that a leisurely and lethargic approach cannot continue for all times to come. It had urged the State and all public authorities to constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts, if not, then the endeavour should be made towards arriving at a settlement instead, rather than re-agitating the belated causes before the courts. It further observed that where the case requires an appeal or application to be filed, despite the delay, then prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any and no such action is taken for delay of 18 years.

30. Further in paragraph number 189, an observation is made that this was followed by the judgment rendered in the case of ***Indian Oil Corporation***, wherein this court sowed the seeds for the

shift in approach of the courts in matters where condonation of delay was sought by the State or its instrumentalities, inasmuch as it held that the Government and its various functionaries cannot be placed on a pedestal higher than any ordinary litigants, and held that the pragmatic and justice oriented approach of the courts should be confined only to cases where there was no gross negligence or deliberate inaction on the part of the State.

31. Further, even in paragraph No.190, the Apex court also taken note of the principles laid down in the judgment of ***Postmaster General***'s case which has been relied upon by the counsel for the respondent and even also in paragraph No. 191 considering the reasons assigned in the application filed for the purpose of Section 5 of Limitation Act, this Court simultaneously observed that such differential treatment cannot continue for all times to come. Further it is also observed that because this Court, in the latter parts of the aforesaid decisions, conveyed an empathetic message to all the States and its

instrumentalities to constitute legal sense for the timely scrutiny of its cases to explore the possibility of settlement instead of pursuing belated claims, wherever possible and to ensure that filing of appeals or application as the case may be is undertaken expeditiously, and the officer responsible for pursuing such action is made personally liable for lapses, if any.

32. The Apex Court also discussed in detail in paragraph No.194, considering the principles laid down in the case of ***Amalendu Kumar Bera v. State of West Bengal***, that in matters of condonation of delay, such indulgence cannot be extended in cases where the delay is attributable to serious laches or negligence on the part of the State. Delays as a result of the official business of the Government requires its pedantic approach from public justice perspective. It held that delay should not be condoned mechanically in the absence of sufficient cause merely because the party happens to be the State. The Hon'ble Apex Court also in the said judgment discussed in

detail the same with regard to the lethargic attitude on the part of the State and also discussed with regard to laches on the part of the State in approaching the Court.

33. Further, in paragraph No.258, the Hon'ble Apex Court held that the length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost its right to have the matter considered on merits because of his own inaction. For a long, it cannot be presumed to be non deliberate delay and in such circumstances of the case, it cannot be heard to plead that for substantial justice deserves to be preferred as against the technical consideration. While considering the plea of condonation of delay, the court must not start with the merits of the main matter. The Court must owes a duty to first ascertain the

bonafides of explanation offered by the parties seeking condonation. It is only if the sufficient cause assigned by the litigant and opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

34. A detailed discussion was made in paragraph Nos.259 and 260 of the said judgment with regard to delay is concerned and in the said case, has taken note of delay of 3,966 days and in paragraph No.260 held that it is abundantly clear that High Court has erroneously condoned a massive delay of 3,966 days on account of certain lapses at the administrative levels and of there being no follow-ups in the proceedings along with finding certain merits in the case of respondent no. 1 against the maintainability of the suit of the appellant and that of the relief moulded by the First Appellate Court. We have no hesitation in stating that such grounds are nowhere near to being "sufficient cause" as per Section 5 of Limitation Act, 1963, the High Court lost sight of the fact that

precedents and authorities it relied upon by it had delay of two-digits or even that of single-digit, more particularly, the delay in those cases was supported by sufficient cause. The present case, however, stands on a different footing, owing to such an enormous delay. Hence, we are not inclined to accept the condonation of the delay by the High Court.

35. Further, in paragraph No.262, the Hon'ble Apex Court gave a conclusion that High Courts ought not to give a legitimizing effect to such a callous attitude of the State Authorities or its instrumentalities, and should remain extra cautious, if the party seeking condonation of delay is a State authority. They should not become surrogates for State laxity and lethargy. The constitutional Courts ought to be cognizant of the apathy and pangs of a private litigant. Litigants cannot be placed in situations of perpetual litigations, wherein the fruits of their decrees or favourable orders are frustrated at later stages. We are at pains to reiterate this everlasting trend, and put all the

High Courts to notice, not to reopen matters with inordinate delay, until sufficient cause exists, as by doing so the Courts only add insult to the injury, more particularly in appeals under Section 100 of the CPC, wherein its jurisdiction is already limited to questions of law. No litigant should be permitted to be lethargic and apathetic, much less be permitted by the Courts to misuse the process of law.

36. Having considered the principles laid down in the recent judgment of Hon'ble Apex Court in the case of ***Shivamma (supra)***, no doubt the counsel appearing for the State relied upon earlier judgment of the Hon'ble Apex Court and those judgments are also relied upon by the Hon'ble Apex Court in the recent judgment and the Court has to take note of factual aspects of each case while applying the principles laid down in the judgment relied upon by the appellant/State as well as respondent/plaintiff. The principles laid down in the judgment depends upon each facts and circumstances of

the case and whether the judgment relied upon by the appellant/State as well as the Judgment relied upon by the respondent/plaintiff are fit into the case of facts and circumstances of the case, this Court has to analyze the same.

37. Having considered the factual aspects of the case and also the case on hand, it has to be noted that the respondent plaintiff filed suit for the relief of declaration and injunction and it has to be noted that the respondent plaintiff claims the relief based on the plea that they are in actual possession of the property and their father was in the possession of the property and subsequent to the death of his father, plaintiff continued the possession and even before filing the suit also, they filed writ petition before the Court and in the Writ Petition also, direction was given to consider the application which was filed by respondent/plaintiff under Form No.50 before the competent authority and inspite of direction was given, the authority not considered the case of the plaintiff and then

initiated contempt proceedings before the High Court and thereafter has also not considered the application. But the counsel appearing for the appellant/State brought to notice of this Court that immediately after passing of the judgment and decree, an order was passed rejecting the claim of the respondent/plaintiff. But no material is placed before the Court with regard to the communication of that order and has now filed memo with documents before this Court and the same is disputed.

38. Apart from that, the appellant/State also relied upon rejection of the application filed by respondent/ plaintiff with regard to phodi work is concerned and relies upon the rejection of the same by filing a memo. Further, the signature found on said memo is not the signature of respondent/plaintiff. Further, learned counsel appearing for respondent/plaintiff also brought to notice of this Court that, it is not the signature of the respondent/ plaintiff and on perusal of the same, it appears that they are different and as per the provisions under Section 73 of the Evidence

Act, 1872, this Court can compare and the same is not the signature of the plaintiff/respondent.

39. In order to prove the factum of rejection of application i.e., Form No. 50, so also the application for phodi, the same is disputed by the respondent/plaintiff and apart from that, counsel also brought to notice of this Court that when Miscellaneous Petition No.17 of 2019 was filed, wherein the Tahsildar who appears on behalf of the appellant/State sworn to an affidavit stating that application of respondent/plaintiff is pending for consideration and when such sworn affidavit is filed by him, the very contention of the appellant/State also cannot be accepted for rejection of the same and also nothing is placed on record before the Court to prove the same and the contention of the appellant/State before this Court is contrary to their own affidavit filed in the year 2019.

40. It is also important to note that when the judgment and decree was passed in the year 2003 and

also when the pleading is made before the trial Court that an application is filed for consideration, the same is not considered by the appellant/State inspite of direction by the High Court i.e., both on Writ Petition and Contempt proceedings. But the Trial Court proceeded to pass an order of declaration, since the State was not contested the matter inspite of service of notice, it is not the case of the appellant/State that no notice was served in the original suit, but kept quite even after service of notice. Till 2009, there was no attempt by appellant/State. But only in the year 2009, an attempt is made to file Miscellaneous Petition No.26 of 2009 for setting aside the judgment and decree dated 29.08.2003 and the same came to be dismissed in 2013 itself and no effort was made either to file an appeal or an application for restoration of Miscellaneous Petition No.26/2009 immediately and also against delay of 6 years. This Court made it clear that when the judgment and decree is passed by the Trial Court which is ex-parte, there is an option to the aggrieved party either to file an appeal or to invoke Order

IX Rule 13 for setting aside the judgment and decree. But, the same has not been done by the appellant/State even from 2003 till 2022 and there is a delay of 18 years in pursuing the remedy and the effort made is also half hearted attempt. Now the counsel appearing for the appellant/State would submit that there is a hand in glove with the plaintiff/respondent and the officials and also it has to be noted that when they came to know about the judgment and decree in the year 2009, despite filing Miscellaneous Petition, but no action was taken against the erred officials and they kept quiet even though they are having the knowledge of judgment and decree from 2009 to 2025 and that too, when this Court noticed that there is a lapse on the part of the officials of the State, a direction was given by this Court vide order dated 24.06.2025, then only, the appellant/State opened its eyes with regard to initiation of action against the erred officials when this Court called for the report for having taken any action. Till then, no action has been taken against them in this regard. But now, counsel appearing for the appellant/State

contended that they have initiated the proceedings against the erred officials and disciplinary enquiry is pending that too at the instance of the Court, the said proceedings is initiated and appellant/State has not taken any voluntary action against the concerned officials for a period of almost 22 years. It is nothing but an eyewash to satisfy this Court.

41. Having taken note of the aforesaid facts into consideration, no doubt, there is a delay of 6,658 days and also it is important to note that the land which the respondent/plaintiff claims as a gomala land, an application is filed under Form No. 50. Form No. 50 is filed before the authority and authority in turn has not decided in this regard for more than 25 years. But now, the appellant/State relies upon rejection of the same and respondent/plaintiff disputes that the same is not communicated.

42. In my earlier discussion, it is noted that in order to prove the factum of rejection of an application, no

material is placed before the Court and even with regard to rejection of phodi work. Further, the signature appears on the affidavit is not the signature of the respondent/plaintiff, however, taking into note of the factual aspects of the case, when the claim is made that the respondent/plaintiff is in unauthorised occupation from longer time, but the application is filed before the competent authority and competent authority has to take the decision with regard to the claim made by the respondent/plaintiff. But has not taken any decision inspite of direction in Writ Petition and Contempt proceedings. Having taken note of lethargic attitude on the part of the appellant/State from the year 2003 that even though they are having the knowledge about the judgment and decree from 2009 onwards and also pleaded that they are having the knowledge about the said judgment and decree, when the suit was filed in 2003 itself and summons were served to the appellant/State, they are not disputing the fact that the summons was not served, but the officials of the State have not pursued the

matter and there is a delay of 22 years in filing the same. The State even bothered to the direction of this Court in the Writ Petition as well as Contempt petition order which have been initiated prior to filing of suit and has not directly approached the Civil Court.

43. The principles laid down in the judgment of the Hon'ble Apex Court in Shivamma's case supra, particularly in paragraph Nos.140,141,142, 258, 259 and 260, it is observed that even in the case of delay of 3966 days on account of certain lapses at the administrative levels and of there being no follow ups in the proceedings along with finding certain merits in the case of the respondent no. 1 against the maintainability of the suit of the appellant and that of the relief moulded by the First Appellate Court, the Hon'ble Apex Court observed that, we have no hesitation in stating that such grounds are nowhere near to being sufficient cause as per Section 5 of the Limitation Act,1963. The High Court lost sight of the fact that the precedents and authorities it relied upon by it had always

of two digits or even that of single digit and cautioned the High Court in condoning the delay. In the present case, however, stands on a very different footing owing to such an enormous delay and inclined to accept the condonation of delay. In the case on hand, it is double the delay of 18 years i.e. delay of 6,658 days and having considered the grounds which have been urged by the learned AAG that it is a lapse on the part of the State officials and they are in hand in glove with the respondent/plaintiff and the same cannot be a ground to condone the delay and even the First Appellate Court also taken note of delay that no sufficient cause is shown. But in the case on hand, only on the insistence of this Court, the action is taken by the appellant/State that too when this Court in Second Appeal made an observation that when the order was passed on 24.06.2025 and also even considering the said fact into consideration, the factual aspects of the case where there is an inordinate delay unless sufficient cause is made out by the First Appellate Court as held by the Hon'ble Apex

Court in recent judgment in ***Shivamma's case*** that merit of the case cannot be considered.

44. This Court discussed in detail the principles laid down in the judgments of the Hon'ble Apex Court which was decided on 12.09.2025, I do not find any ground to set aside the order of the Appellate Court in coming to the conclusion that the appellant/State has made out the ground to condone the inordinate delay of 6,658 days. No doubt, the Appellate Court made an observation that even if it is set aside and remanded, the appellant/State will not pursue the remedy and though such observation is made, the same shows the conduct of the appellant/State in this regard. Even the judgment and decree was passed in 2003 and also summons was served to the appellant/State, they did not pursue the suit and even contented that they came to know about the same in the year 2009 and so also the appropriate remedy is not availed till 2022 and after lapse of 18 years, the appeal is filed before the First Appellate Court and when such being the case, the principles laid

down in the judgment of the Hon'ble Apex Court in the case of ***Shivamma's case (supra),*** aptly applicable to the case on hand even if it is a State Government, there cannot be two yardstick to condone such a huge delay. Further, even if the State is losing the prime property and the same cannot be a ground to condone such a huge delay. But now the learned AAG would submit that as the officials are in hand in glove with the respondent/plaintiff, they could not pursue the remedy. When such being the case, since already the proceedings is initiated against the alleged erred officials at the instance of this Court and not voluntarily, and if the appellant/State succeeds in the same, if there is any loss to the State, the same can be recovered from the erred officials who are responsible for losing the property of the State as observed by the Hon'ble Apex Court in ***Postmaster General***'s case referred supra.

45. With the aforesaid observation, the Regular Second Appeal stands ***dismissed*** as there no grounds to admit and frame substantial questions of law.

Sd/-
(H.P.SANDESH)
JUDGE

SSD
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