



WEB COPY

CMP No.13952 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08-07-2026

CORAM

THE HON'BLE MRS.JUSTICE N. MALA

**CMP No.13952 of 2021
in S.A.No.658 of 2011**

1. Chinnappa Gounder
2. Nallasamy
3. Thangamuthu
4. Shanmugam (died)
5. Dhanalakshmi
6. Krishnakumar
7. Mohansundaram

..Petitioner(s)

Vs

V.C.Ramasamy

..Respondent(s)

To condone the delay of 1096 days in filing the petition to restore the above second appeal.

For Petitioner(s):

Mr.A.Sundaravadhanan

For Respondent(s):

Mr.N.Manokaran



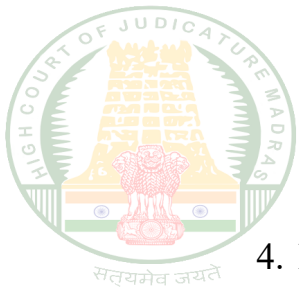
ORDER

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This Civil Miscellaneous Petition is filed to condone the delay of 1096 days in filing the petition to restore the Second Appeal, which was dismissed for non-prosecution on 13.02.2017.

2. The petitioners, in their affidavit, have stated that the Second Appeal was dismissed for default, since the junior counsel attached to the office, had reported that case papers were taken back by the party. They further stated, upon hearing that the first respondent had been spreading the news in the village that the case had ended in his favour, the appellants immediately verified the records and found that the Second Appeal was dismissed for non-prosecution on 13.02.2017. Thereafter, they filed the present petition to condone the delay of 1096 days in filing the petition to restore the Second Appeal.

3. The respondent filed a counter affidavit, stating, *inter alia*, that the petitioners had earlier filed a petition to restore the Second Appeal, but they failed to follow up the same. It is also stated that the petitioners failed to disclose the details of the earlier petition filed through another advocate in the affidavit and that they had not assigned any valid reasons for condoning the inordinate delay of four-and-a-half years. It is further stated that subsequent to the dismissal of the Second Appeal, third party interests have been created over the property in the form of a registered partition deed, dated 31.03.2017, and, therefore, it would be unfair to reopen the matter at this point of time.



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4. Learned counsel for the petitioners submitted that the petitioners had no knowledge of any earlier petition filed for restoration of the Second Appeal and, therefore, the said fact was not mentioned in the affidavit.

5. Learned counsel for the respondent is also not able to give the SR number of the earlier petition filed by the petitioners, but he has produced a copy of the affidavit filed in the supposed civil miscellaneous petition, by the other advocate. The learned counsel submitted that if the delay is calculated from the date of the order, then the delay is more than four-and-a-half years, which is not adequately explained and hence the petition deserves to be dismissed.

6. I have heard both sides and also perused the records.

7. The first objection of the respondent's counsel is that, earlier the petitioners filed a petition for restoration through another counsel and failed to either follow up the same or disclose it and hence the petition should not be entertained. The respondent, in support of the said objection, produced the copy of the affidavit sworn by the junior counsel representing the erstwhile counsel Shri Naveen Kumar Maruthi. The affidavit is sworn by a junior counsel and, so, to impute knowledge of the same to the petitioners, some further material ought to be produced. Unfortunately, the respondent is not able to furnish even the SR number of the petition. Under the circumstances, I find no reason to doubt the veracity of the petitioners' claim that to their knowledge no such



application was filed and hence there was no question of disclosing it in this petition. Hence, the first objection of the respondent is rejected.

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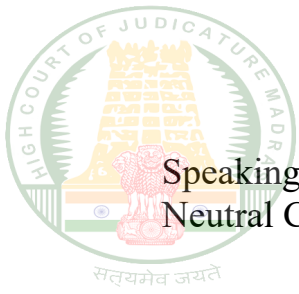
8. Learned counsel for the respondent next submitted that pursuant to the dismissal of the Second Appeal, a family partition deed has been executed and, therefore, prejudice would be caused to the respondent if the Second Appeal is restored at this stage. The counsel for the respondent, when questioned, if the sharers pursuant to the partition created any encumbrance over the property by way of sale, lease etc., fairly submitted that no third party interests have been created. In the light of the categorical admission that third party interests have not been created, I am of the view that the respondent will not be prejudiced if the petitioners are afforded an opportunity to contest the Second Appeal on merits.

9. In view of the above discussions and under the facts and circumstances of the case, I am of the view that the delay deserves to be condoned, however, subject to conditions. The petition to condone the delay of 1096 days in seeking to restore the Second Appeal is allowed, on condition that the petitioners pay costs of Rs.10,000/- (Rupees Ten Thousand only) to the respondent within a period of two weeks from the date of receipt of copy of this order and file a memo to that effect before this Court.

10. Post the matter on 23.07.2026 for reporting compliance.

08-07-2026

Index: Yes/No



Speaking/Non-speaking order
Neutral Citation: Yes/No

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N.MALA, J.

DIXIT

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