



WEB COPY

CMP No. 32985 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-07-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

CMP No. 32985 of 2025

in

AS NO. 539 OF 2019

K.Jawahar
S/o P.Krishnan,
No 2/125,
M.G.R Street,
Medavakkam,
Chennai 600 100

..Appellant(s)

Vs

K.Kalidass
S/o Late Kuppuswami,
No 1/17A,
Pillaiyar Koil Street,
Medavakkam,
Chennai 600 100

..Respondent(s)

CMP No. 32985 of 2025

Petition filed under Section 5 of the Limitation Act r/w. Order 41 Rule 3(A) CPC to condone the delay of 689 days in filing the application to restore the appeal.

For Appellant(s): Najeeb Usman Khan

For Respondent(s): Mr.M.Vijayakumar



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Order

(Order of the Court was made by M.Jothiraman J.)

This Civil Miscellaneous Petition has been filed under Section 5 of the Limitation Act r/w. Order 41 Rule 3 (A) of the Civil Procedure Code to condone the delay of 689 days in filing the application to restore the appeal in A.S.No.539 of 2019, on the file of this Court.

2. Originally, the respondent had filed the Suit in O.S.No.295 of 2008 on the file of the District and Sessions Court at Chengalpattu for Specific Performance of the Agreement for Sale dated 01.09.2007 and the same was decreed on 24.01.2019. Aggrieved over the same, the petitioner / appellant / defendant has preferred an appeal before this Court in A.S.No.539 of 2019. The said appeal was listed on 06.11.2023 and thereafter, the matter was listed for dismissal on 15.11.2023 under the caption “For Dismissal” and on 15.11.2023, when the appeal was taken up, there was no representation on the side of the appellant and therefore, this Court dismissed the appeal for non-prosecution.

3. It is stated in the affidavit filed by the petitioner / appellant / defendant that during the Month of November, 2023, his counsel was suffering from serious health issues and he engaged some of his associates to represent the case and to seek an adjournment, but unfortunately there was no representation. The

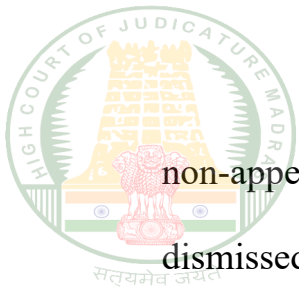


petitioner was also suffering from viral fever and could not follow with his Advocate. It is also stated that the petitioner has to take care of his aged father

and other family members which prevented him from contacting his counsel.

The respondent / plaintiff filed an Execution Petition and an amendment petition was also filed to amend the schedule of property in E.A.No.3 of 2024 in E.P.No.1 of 2019 and the same is pending. It is also stated in the affidavit that he had filed an application to restore the appeal during the month of August, 2024 and the application was returned for some defects and thereafter, the said application was not able to be traced by his junior counsel, who took the return of the papers and presently his counsel has not come out of his illness and he asked him to engage another counsel to conduct the case and hence, there occurred a delay of 689 days in filing the application to restore the appeal.

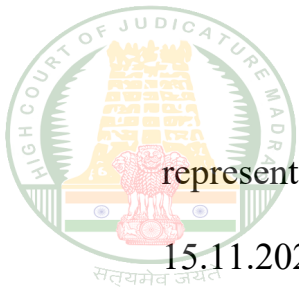
4. Opposing the same, the respondent / plaintiff had filed a counter affidavit wherein it has been stated that the Suit was decreed on 24.01.2019. Even though the appeal was listed for final hearing on 29.11.2021 and on so many occasions thereafter, they were seeking adjournments repeatedly on the score that they were not ready. Finally, the case was listed on 06.11.2023 and there was no representation on the part of the appellant and therefore, the appeal was directed to be listed on 15.11.2023 under the caption “for Dismissal” and since there was no representation on 15.11.2023 also, the appeal was dismissed for non-prosecution. The petitioner / appellant has only stated the reasons for



non-appearance in the appeal on November, 2023 when the appeal was dismissed for non-prosecution stating the health issues of both the appellant as well as counsel without any proof for the same. But the petitioner / appellant has failed to state any reason for non filing the restoration petition within the prescribed period of 30 days. The petitioner / appellant has mechanically stated that they filed an application to condone the delay to restore the appeal during the month of August, 2024, but on verification, neither such application was filed nor it was returned. The petitioner / appellant has failed to attribute any reasons for the enormous delay of 650 days.

5. The learned counsel appearing for the petitioner / appellant would submit that the application to condone the delay to restore the appeal was filed during the month of August, 2024 and the application was returned for some defects. The said application was not able to be traced by the junior Advocate who took the return papers and the litigant should not be made to suffer because of the fault on the part of the advocate concerned to represent the case before the Court when the matter was called. Sufficient reason has been shown in the affidavit filed by the petitioner and an opportunity may be provided to contest the case.

6. *Per contra*, learned counsel appearing for the respondent / plaintiff would submit that when the appeal was listed on 06.11.2023, there was no



representation on the part of the appellant and the appeal was listed on 15.11.2023 under the caption “For Dismissal”. There was no representation on

the said date and therefore, this Court dismissed the appeal for non-prosecution.

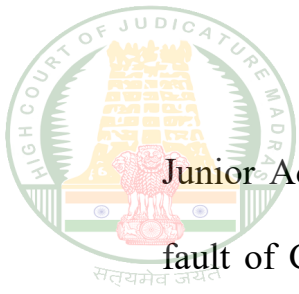
The respondent / plaintiff filed E.A.No.3 of 2024 in E.P.No.1 of 2019 to amend the schedule of property which was posted on 20.11.2025 and thereafter, the petitioner has filed the present petition to condone the delay of 650 days to restore the appeal. Sufficient opportunities were given to the appellant / petitioner and the same was not utilised by him. The reason stated in the affidavit is not acceptable one, when the appeal was dismissed for non-prosecution stating health issues of both the petitioner as well as his counsel without any proof of document. Though the petitioner / appellant contended that they have filed the application to condone the delay during the month of August, 2024 and the same was returned for some defects and could not be traced by his junior counsel who has taken the return of papers, on verification, neither such application was filed nor it was returned. To strengthen his contentions, he has relied upon the judgment of the learned Supreme Court of India in *Majji Sannemma @ Sanyasirao v. Reddy Sridevi & Ors. in Civil Appeal No.7696 of 2021 dated 16.12.2021* to show that discretion to condone the delay has to be exercised judiciously based on the facts and circumstances of each case and also to show that expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party.



7. It is seen from the records that the respondent / plaintiff filed the Suit in O.S.No.295 of 2008 on the file of the Sessions Judge, Mahila Court, Chengalpattu seeking the relief of Specific Performance of the Agreement of Sale dated 01.09.2007 and the same was decreed on 24.01.2019. Aggrieved over the same, the present petitioner / appellant / defendant preferred the appeal in A.S.No.539 of 2019 and the matter was listed on several occasions and lastly the matter was listed on 06.11.2023 and on that day, there was no representation for the appellant / petitioner's side and thereafter, the matter was listed on 15.11.2023, where the following judgment has been passed by this Court:

“Since there was no appearance for the appellant on 06.11.2023, we had directed the matter to be listed under the caption “For Dismissal” today. Even today, none appeared for the appellant. Hence, the appeal is dismissed for non-prosecution. No costs. Consequently, connected miscellaneous petition is closed.”

8. On perusal of the affidavit filed by the petitioner, it is seen that in the month of November, 2023, his counsel was suffering from serious health issues and he engaged some of his associate counsel to represent the case and seek an adjournment, but unfortunately there was no representation. It is also stated that the appellant / petitioner was also suffering from viral fever and could not follow his Advocate. It is also seen that during the month of August, 2024, the application to restore the appeal was filed before this Court, but the same was returned with some defects, but the said application could not be traced by the



Junior Advocate who took the return of papers. It is well settled that for the fault of Counsel representing the case, a litigant should not be made to suffer as laid down by the Hon'ble Supreme Court, in the case of ***Ashok Kumar v. New India Assurance Co. Ltd., reported in [(2023) 9 SCR 1240]***.

9. Considering the reasons assigned in the affidavit filed in support of this petition and also in the light of the judgment in ***Ashok Kumar's case (cited supra)***, in order to decide the real controversy between the parties, an opportunity may be provided to the petitioner / appellant / defendant to contest the decree and judgment passed against him. If this civil miscellaneous petition is allowed, no serious prejudice would be caused to either side.

10. Accordingly, in the light of above reasoning, this Civil Miscellaneous Petition is allowed and the delay of 689 days in filing the application to restore the appeal is hereby condoned. No costs.

(N.S.K., J.) (M.J.R., J.)
01-07-2026

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

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