

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30-06-2026

CORAM

THE HONOURABLE MR JUSTICE S. SOUNTHAR

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**C.R.P(MD).No.487 of 2023
and C.M.P(MD).No.2353 of 2023**

1.M.Selvaraj
2.J.Francis Pappa
3.Manoj Asirvatham
4.J.Jecintha Leela Mary
5.Vinod Rubes Kumar
6.Sharmila Sopna

... Petitioners

Vs

Subbammal (died)
1.S.Mookkandi
M.Joseph (died)
P.Soundrapandi (died)
Sermakani(died)
Shanmugavel Nadar (died)
2.Samuvel Nadar
3.Rajamani Nadar
4.Leelavathi Hepsibai
5.Ponraj Samuvel
6.Jayakumar
7.Rajkumar
8.Raabikumar
9.Sundarsingh

... Respondents

Prayer : Civil Revision Petition is filed under Section 115 of the Code Civil Procedure, to set aside the fair and decretal order dated 11.07.2022 passed in I.A.No.226 of 2017 in unregd.A.S of 2017 on the file of the learned Subordinate Judge, Tiruchendur.



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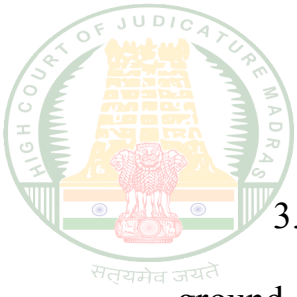


For Petitioners : Mr.Mohamed Haneef for
Mr.R.Narmathan
For R1, R4 to R9 : No appearance
R2 & R3 (died)

ORDER

The civil revision petition is filed challenging the order passed by the First Appellate Court dismissing the application filed by the petitioners seeking to condone the delay of 78 days in filing regular first appeal.

2.The first respondent herein and the deceased Subbammal filed a suit in O.S.No.32 of 2001 on the file of the District Munsif Court, Sathankulam, and obtained a decree for declaration and injunction against the petitioners and other defendants. The petitioners, who were arrayed as defendant Nos.3, 8 to 12 filed a first appeal before the Appellate Court with the delay of 78 days. In the affidavit filed in support of the condone delay petition, it was stated by the first petitioner that at the relevant point of time, he was suffering from fever and joint pain and hence, he could not contact the counsel and file the first appeal in time. It was further stated that he got recovered completely during second week of Jan-2017 and thereafter, steps have been taken to file the appeal.



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3.The First Appellate Court dismissed the application mainly on the ground that no reason has been given for failure of the other petitioners to pursue the matter and file the appeal in time. The First Appellate Court also pointed out that the petitioner, who had sworn the affidavit in support of the condone delay petition, failed to enter the box and only the third petitioner had entered the box. Aggrieved by the dismissal of the condone delay petition, the petitioners have come before this Court.

4.The learned counsel appearing for the petitioners would submit that, having regard to the length of delay in filing the appeal, this Court may take a liberal view of the matter and condone the delay, notwithstanding the deficiencies in the affidavit filed in support of the petition. The learned counsel further submitted that affidavits are drafted by Advocates and that any omission or inadequacy therein should not be put against the parties.

5.A perusal of the affidavit filed in support of the condone delay petition would indicate that the first petitioner alone had sworn the affidavit and he mentioned about his illness at the relevant point. However, it is not the case of the petitioners that the first petitioner was in charge of the litigation on behalf of the other petitioners or that he had sworn the affidavit



on their behalf. When all the petitioners jointly presented an appeal before the First Appellate Court, in case, the first petitioner was suffering from illness at the relevant point of time, the other petitioners could have taken steps to file appeal well within the limitation period. In the affidavit filed in support of the condone delay petition no reason has been given for failure of the other petitioners to pursue the matter.

6. Though the first petitioner in his affidavit had averred that he was suffering from fever and joint pain at the relevant point of time and hence, could not present the appeal in time, he failed to appear before the Court to give evidence. However, on behalf of the petitioners, the third petitioner had been examined as P.W.1 to explain the delay. Therefore, it is clear that the other petitioners also actively involved in the litigation and the first petitioner alone was not exclusively in-charge of the litigation. Had the first petitioner entered the box as a witness, the other side would have got an opportunity to cross-examine him with regard to the averments made by him in the affidavit filed in support of the condoned delay petition. The first petitioner in order to avoid cross-examination deliberately kept himself away from the witness box and allowed the third petitioner to be examined as a witness. The First Appellate Court by pointing out all these lacuna in the case of the petitioners



rightly came to the conclusion that the petitioners have not properly explained the delay in filing the first appeal and dismissed the petition.

7. The learned counsel appearing for the petitioner also submitted that the affidavits are drafted by the advocate and hence, any omission or lacuna in the affidavit cannot be put against the parties. The prayer for condonation of delay needs to be decided based on the affidavit filed in support of the same. If there is any omission or deficiency in the affidavit and the averments in the affidavits are not sufficient to support the prayer, the Court cannot assume facts and fill up the lacuna in the affidavit in order to grant a prayer. The affidavit is signed by the party and therefore, he has to take the responsibility regarding averments or omissions in the affidavit. A party cannot disown his own averments in the sworn affidavit and put the blame on the advocate. If the submission made by the learned counsel for the petitioner is accepted, there will be no sanctity for the sworn affidavit filed by the parties. Eventually, in every case, the parties would disown their averments in the sworn affidavits and put the blame on the Advocate and try to escape from their own pleadings. The same will defeat the very object of the pleadings. The main object of the pleadings is to prevent the litigants from changing their stance according to their convenience during the course of



litigation. Therefore, the parties are bound by the averments or omissions in the affidavit and they cannot disown their own averments in the sworn affidavits and put the blame on the advocates.

8.It is settled law that a person seeking condonation of delay in filing the appeal must establish sufficient cause within the meaning of Section 5 of Limitation Act. The Court shall not be carried away by the length of delay, but the sufficiency of the reasons given by the petitioners to explain the delay is material. The First Appellate Court rightly considered the averments found in the condone delay petition as well as in the counter affidavit, came to the conclusion that the delay has not been properly explained and dismissed the condone delay petition. I do not find any material irregularity in the said order. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

30-06-2026

NCC : Yes/No

Index : Yes/No

Rmk

To

1.The Subordinate Judge, Tiruchendur.

2.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



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S. SOUNTHAR.J.

Rmk

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