



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

RESERVED ON :19.06.2018
PRONOUNCED ON :26.06.2018

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PRESENT

The Hon`ble Mr.Justice M.SUNDAR

C.M.P. (MD) No.3568 of 2016 in S.A. (MD) No.571 of 2007,
C.M.P. (MD) No.3569 of 2016 in S.A. (MD) No.600 of 2007,
C.M.P. (MD) No.3289 of 2016 in S.A. (MD) No.803 of 2006
and

C.M.P. (MD) No.7455 of 2016 in Rev.Aplc (MD) No.SR50776 of 2015
(S.A. (MD) No.288 of 2006)

C.M.P. (MD) No.3568 & 3569 of 2016 in S.A. (MD) No.571 & 600 of 2007:

THIRUMENI @ PACKIYAWATHI,

... PETITIONER/APPELLANT

Vs

1 K.SIVASUBRAMANIAN,
2 PAPPATHIAMMAL @ PAPPU AMMAL
3 ARUNACHALAM THEVAR,
4 KASI VISWANATHAN
(RESPONDENTS NO.2 TO 4 ARE REP BY
POWER AGENT 1ST RESPONDENT HEREIN)

5 SAKTHIVEL CHETTIAR,
6 MIRUNALINI AMMAL
7 THULASIDASAN NAIR,
8 CHANDRALEELA BROWNIN
9 VELAIYA
10 ESAKKI
11 SIVASUBRAMANIAN
12 BALASUBRAMANIAN
13 PETCHIMUTHU,
14 AYYADURAI
15 MAYANDI THEVAR,
16 SHANMUGA THEVAR,
17 RENGANATHAN
18 CHITRAI
19 PARAMASIVAN CHETTIAR,
20 MADASAMY
21 MURUGAN
22 THANKAPANDI
23 MARUDHANAYAGAM
24 MOOKKAMMAL
25 SIVASUBRAMANIAN @ SELVAM,
26 VENKAI
27 MURUGAN



28 KANNAN
29 VANAMAMALAI
30 MUTHUKRISHNAN
31 SELVAKUMAR
32 SIVAGNANAMMAL (DIED)
33 AVUDAIATHAI
34 SUBBU KUTTI @ SUBBAMMAL
35 SHANMUGAVEL
36 MURUGAN
37 VELAMMAL,
38 THANGARJ NADAR, (DIED)
39 VASIGARA THILAGAR,

... RESPONDENTS/RESPONDENTS

Prayer in CMP(MD). 3568/ 2016 in SA(MD).571/ 2007:

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to condone the delay of 287 days in representing the above application in M.P.(MD)SR.No.20566 of 2015 in S.A.(MD)No.571 of 2007.

PRAYER IN S.A.(MD)No.571 of 2007:

To prefer this Memorandum of SA against the Judgment and Decree passed in AS.194/2005 on the file of the Principal Sub Judge, Tirunelveli dated 13/12/2005 confirming the Judgment and Decree passed in OS.708/1985 on the file of 1st Additional District Munsif Court, Tirunelveli dated 30/12/2004.

Prayer in CMP(MD). 3569/ 2016 in SA(MD). 600/ 2007:

To condone the delay of 287 days in representing the above application in M.P.(MD)SR.No.20227 of 2015 in S.A.(MD)No.600 of 2007.

Prayer in SA(MD). 600/ 2007 :

The Appellant above named begs to prefer this Memorandum of Second Appeal against the Judgment and Decree passed in AS.75/2005 on the file of the Principal Sub Judge, Tirunelveli dated 13/12/2005 confirming the Judgment and Decree passed in OS.708/1985 on the file of 1st Additional District Munsif Court, Tirunelveli dated 30/12/2004.

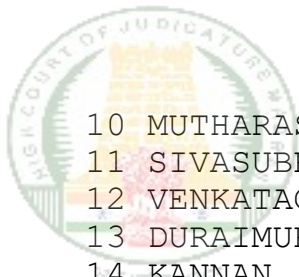
CMP(MD) No.3289 of 2016 INSA(MD) No.803 of 2006 :

S.THIRUMENI @ BAKIAWATHI,

... PETITIONER/APPELLANT

Vs

1 MARUTHANAYAGAM,
2 SHANMUGATHEVAR,
3 BAKKIATHAI
4 DURAISINGH
5 CHRISTOPHER
6 VESIGARA THILAGAR
7 THANGARAJ (DIED)
8 SUBBU KUTTI @ SUBBAMMAL
9 SUBBAMMAL



10 MUTHARASU (DIED)
11 SIVASUBRAMANIAM,
12 VENKATACHALAM
13 DURAIMURUGAN
14 KANNAN
15 VANAMAMALAI
16 MARUDHANAYAGAM
17 PETCHIAMMAL
18 M.ARUNA
19 M.ANNALAXMI
20 M.ARUNKUMAR
21 RAJESWARI
22 JAYAKANCHANA MURUGESWARI
23 AMUDHA VASUGIDEVI
24 JAYALAKSHMI
25 BHUVANESWARI
26 VENKATASUBRAMANIAN,
27 KARTHIKEYAN
28 EZHILARASI

... RESPONDENTS/RESPONDENTS

Prayer in CMP(MD). 3289/ 2016 in SA(MD). 803/ 2006 :

To condone the delay of 220 days in representing the above application in M.P.(MD)SR.No.30469 of 2015 in S.A.(MD)No.803 of 2006.

Prayer in SA(MD). 803/ 2006 :

The Appellant abovenamed begs to prefer this Memorandum of Grounds of Second Appeal against the Judgment and Decree dated 27.11.2000 and made in AS.110/1997 on the file of the Judgment and Decree dated 21.12.1996 and made in OS.1285/1985 on the file of the Principal District Munsif, Tirunelveli.

CMP(MD) No.7455 of 2016 IN REV.APLC(MD) No.SR50776 of 2015:

MIRUNALINI AMMAL (DIED)

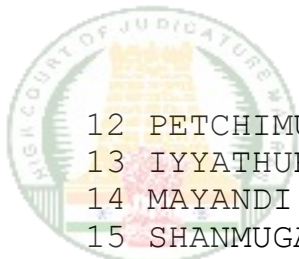
1 THULASIDASAN NAIR

2 P.PREMNATH

... PETITIONERS/REVIEW APPLICANT

Vs

1 K.SIVASUBRAMANIAN
2 SMT.PAPPATHIAMMAL @ PAPPU AMMAL,
3 SRI.ARUNACHALA THEVAR
4 SRI.S.KASIVISWANATHAN
5 SRI.THIRUMENI @ PACKIYATHAMMAL
6 SRI SAKTHIVEL CHETTIAR
7 CHANDRA LEELA BROWNING
8 VELIAH
9 ESAKKI
10 SIVASUBRAMANIAN
11 BALASUBRAMANIAN



12 PETCHIMUTHU
13 IYYATHURAI
14 MAYANDI THEVAR
15 SHANMUGA THEVAR
16 RENGANATHAN
17 CHITRAI
18 PARAMASIVAN CHETTIAR
19 MADASAMY
20 MURUGAN
21 THANGAPANDI
22 MARUTHANAYAGAM
23 MOOKKAMMAL
24 SIVASUBRAMANIAN @ SELVAM
25 VENKATTU
26 MURUGAN
27 KANNAN
28 MINOR VANUVAMALAI
29 MUTHUKRISHNAN
30 SELVAKUMAR
31 SIVAGNANAMMAL
32 AVUDAITHAI
33 SUBBUKUTTI @ SUBBAMMAL
34 SHANMUGAVELU
35 MURUGAN
36 VELAMMAL
37 THANGARAJ NADAR
38 VASIKARA THILAGAR

... RESPONDENTS/RESPONDENTS

(THE NOTICE OF RESPONDENTS 6,7,12,15,19 TO 28,37 WERE
DISPENSED WITH IN THE SECOND APPEAL HENCE, NOTICES
TO THEM MAY DISPENSED WITH)

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to Condone the delay of 213 days in representing the review application against the judgment and decree passed in S.A.No.288 of 2006 dated 30.04.2015 and thus render justice.

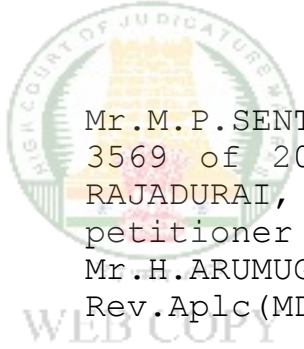
PRAYER IN REV.APLC(MD) No.SR50776 of 2015:

to set aside the judgment and decree passed in SA.No.288 of 2006 dated 30.04.2015 by allowing the above review application

Prayer in SA(MD). 288/ 2006 :

To prefer this Memorandum of Grounds of Second Appeal against the Judgment and Decree dated 13/12/2005 and made in AS.84/2005 on the file of Principal Sub Court, Tirunelveli, confirming the Judgment and Decree dated 30/12/2004 in OS.708/1985 on the file of 1st Addl. District Munsif, Tirunelveli and allow this Second Appeal and render justice.

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of Mr.G.PRABHU RAJADURAI, Senior Counsel for



Mr.M.P.SENTHIL, Advocate for the petitioner in C.M.P.(MD) No.3568 & 3569 of 2016 in S.A.(MD)No.571 & 600 of 2007 and of Mr.G.PRABHU RAJADURAI, Senior Counsel for Mr.A.MOHAMED HANEFF, Advocate for the petitioner in CMP(MD).3289/2016 in SA(MD)No.803 of 2006 and Mr.H.ARUMUGAM, Advocate for the petitioner in CMP(MD).7455/2016 in Rev.Aplc(MD)No.SR50776 of 2015, the court made the following order:-

This common order will govern and dispose of these four civil miscellaneous petitions, i.e., C.M.P.(MD)Nos.3568 of 2016, 3569 of 2016, 3289 of 2016 and 7455 of 2016.

2 All these four petitions are for condonation of delay of various periods in representation. Three of the aforesaid four petitions are for condonation of delay in representing petitions seeking rehearing of second appeals. C.M.P.(MD)No.7455 of 2016 alone is for condonation of delay in representing a review petition seeking review of a judgment in a second appeal.

3 Though this is an order in petitions seeking condonation of delay in representation, considering the submissions made by both sides that this lis has a chequered history and owing to the number of litigations as well as number of proceedings, this court deems it necessary to set out the factual matrix and trajectory of hearings thus far in a nutshell for the purpose of clarity.

4 Factual matrix in a nutshell :

(a) The entire lis appears to have commenced almost three decades and three years ago, on 18.7.1985 to be precise when O.S.No.708 of 1985 was filed by one K.Sivasubramanian and four others on the file of Additional District Munsif Court, Tirunelveli. In this suit, at the time of inception of the suit, there were as many as 43 defendants and when a preliminary decree came to be passed, there were as many as 51 defendants. This suit is for partition and separate possession of about 9 acres and 96 cents of lands in Uthamapandiankulam village, Palayamkottai taluk, Tirunelveli District. This 9 acres and 96 cents shall hereinafter be referred to as 'suit properties' and this suit, i.e., O.S.No.708 of 1985 on the file of the Additional District Munsif Court, Tirunelveli shall henceforth be referred to as 'partition suit'. The suit properties are comprised in seven different survey numbers.

(b) Close on the heels of the partition suit, another suit being O.S.No.1285 of 1985 was filed on the file of the District Munsif Court, Tirunelveli. This suit was filed by one S.Thirumeni @ Packiavathi and two others. In this suit, nine individuals were arrayed as defendants. In this suit, the prayer was for declaration that plaintiffs and two of the defendants are entitled to plaint scheduled property (as set out in plaint in O.S.No.1285 of 1985) besides a prayer for consequential injunction qua alienation. To be noted, the plaint scheduled property here is 20.95 hectares of land in Uthamapandiankulam village, Palayamkottai taluk, Tirunelveli District. Further to be noted, court is informed that this plaint

Court, The
suit'.

(c) In the partition suit, i.e., O.S.No.708 of 1985, after full contest, a preliminary decree came to be passed in the court of first instance on 30.12.2004. The declaration suit, i.e., O.S.No.1285 of 1985 came to be dismissed after full contest on 21.12.1996. Against the aforesaid preliminary decree in the partition suit, four separate first appeals came to be filed.

(d) A.S.No.194 of 2005 was filed by defendant No.3 in the partition suit, i.e., O.S.No.708 of 1985. A.S.No.84 of 2005 was filed by defendant Nos.7 and 8 in the partition suit. A.S.No.75 of 2005 was filed by defendant No.34 in the partition suit. A.S.No.38 of 2005 was filed by defendant Nos.50 and 51 in the partition suit.

(e) All the aforesaid four first appeals came to be dismissed by a common judgment dated 13.12.2005 made by the Principal Sub Court, Tirunelveli. To be noted, along with four first appeals, one cross objection was also disposed of.

(f) Against the dismissal of A.S.No.194 of 2005, S.A.(MD)No.571 of 2007 came to be filed in this court. Against the dismissal of A.S.No.75 of 2005, S.A.(MD)No.600 of 2007 came to be filed in this court. Against the dismissal of A.S.No.84 of 2005, S.A.(MD)No.288 of 2006 came to be filed in this Court.

(g) All the aforesaid three second appeals came to be disposed of by a common judgment of this Court dated 30.04.2015.

(h) It would be appropriate now to revert back to the aforesaid declaration suit, i.e., O.S.No.1285 of 1985 which came to be dismissed on 21.12.1996. Against the dismissal of the declaration suit, plaintiff Nos.1 and 2 therein filed an appeal in A.S.No.110 of 1997 on the file of the I Additional Sub Court, Tirunelveli, which came to be dismissed on 27.11.2000. Against the dismissal of A.S.No.110 of 1997, S.A.(MD)No.803 of 2006 came to be filed in this court. S.A.(MD)No.803 of 2006 came to be disposed of by this court on 10.03.2015.

(i) Besides the above, there was also an application for rejection of plaint taken out in A.S.No.18 of 2017 on the file of Additional Subordinate Court, Tirunelveli. A.S.No.18 of 2017 was filed against final decree application I.A.No.348 of 2005 being allowed. In A.S.No.18 of 2017, reject the application being I.A.No.49 of 2017 was taken out with prayer for rejection of Appeal on the ground that appeal at the instance of parties who are not



affected is not maintainable. This rejection application was dismissed against which, C.R.P.(MD)No.111 of 2018 has been filed in this court. C.R.P.(MD)No.111 of 2018 is pending and has tagged to rehearing petitions and review petition.

(j) With regard to disposal of the aforesaid three second appeals, S.A.(MD)Nos.571 of 2007, 600 of 2007 and 288 of 2006, by a common judgment dated 30.4.2015, appellants in S.A.(MD)Nos.571 of 2007 and 600 of 2007 filed applications for rehearing inter-alia under Order XLI Rule 19 of Code of Civil Procedure, 1908 ('CPC' for brevity). Appellant in S.A.(MD)No.803 of 2006 which came to be disposed of on 10.03.2015 also filed a similar petition for rehearing (C.M.P.(MD)No.3289 of 2016). Besides these three petitions for rehearing, appellant in S.A.No.288 of 2006 filed a review petition seeking review of the order dated 30.04.2015 and delay in representing the review petition is sought to be condoned vide C.M.P.(MD)No.7455 of 2016 which is one of the four instant civil miscellaneous petitions (C.M.Ps.) herein.

(k) Narrative supra gives a brief backdrop as to how the instant four petitions have arisen.

(l) Now this court proceeds to examine the instant four petitions.

5 Prayer in C.M.P.(MD)No.3568 of 2016 is as follows :

"It is therefore prayed that this Hon'ble Court may be pleased to condone the delay of 287 days in representing the above application in M.P.S.R.No.20566 of 2015 in S.A.(MD)No.571 of 2007 and pass such further or other orders, as this Hon'ble Court may deems fit and proper in the circumstances of the case thus render justice."

6.The reason for delay in representation is articulated in paragraph 16 of the affidavit filed in support of the petition and the same reads as follows :

"16.I submit that the Registry of this Hon'ble Court returned the papers on 19.05.2015 for certain compliances and thereafter the copy applied in the above second appeal came to be made ready only on 10.09.2015. It is thereafter my counsel sought for certain clarifications as well as for certain documents for inclusion of the same in the typed set of papers. My counsel also sought for the earlier cause list in order to substantiate the plea which I have mentioned in the affidavit filed in support of my original application apart from other details. Unfortunately in the meanwhile, due to my old age, I fell-ill and I was residing with my daughter at Karaikal as my son-in-law is a Doctor and I took rest at my daughter's house almost for five months. In such



circumstances I was not able to contact my counsel immediately. Only in the mid of January, 2016, I once again came down to Tirunelveli and my contacted my counsel to know about the status of the above application and my counsel once again reminded that I should furnish certain documents as well as certain particulars for numbering the above application. Once again, I met my earlier counsel to seek for certain particulars with regard to the dates on which the above second appeals was listed and details regarding the application filed under Order 41, Rule 17. After receiving all those particulars, I have once again represented the above appeal along with typed set of papers. In the above process there is a delay of 287 days has occasion in representing the papers. The delay is neither willful nor wanton, but only for the bonafide reasons stated hereinabove. If the delay is not condoned, I will be put to immense hardship and irreparable loss. In these circumstances and in the interest of justice that this Hon'ble Court may be pleased to condone the delay of 287 days in representing the above application in M.P.S.R.No.20566 of 2015 in S.A. (MD)No.571 of 2007."

7 Paragraph 16 of the affidavit has been met in paragraph 15 of the counter affidavit, which reads as follows :

"15.As regard to Para 16 of the affidavit, I deny the entire allegations and submit that the above facts are being narrated only for the purpose of this case and there is no iota of truth. Since, the petitioner before filing the present petition and Connected appellants in the second appeal has filed S.A.(MD)No.288 of 2006 and S.A.(MD)No.600 of 2007 filed the Civil Revision Petition and Review Application No.41 of 2016 and 69 of 2016 to prolong the case whereas, I have not been allowed by the petitioner herein to enjoy the fruit of my order which I had obtained in the year 30.12.2004 in O.S.No.708 of 1985."

8 In sum and substance, the reason is counsel needed some papers and inputs for representation, but the litigant, who is more than 75 years old, fell ill and was taking rest in her daughter's residence in Karaikkal (her son-in-law being a medical doctor). The litigant could not contact her counsel and give the inputs immediately, but ultimately gave the inputs in January, 2016 resulting in delay. This has been denied in the counter affidavit as facts that have been narrated only for the purpose of the case and that there is no truth in the same.

9 Prayer in C.M.P. (MD)No.3569 of 2016 is as follows :

<https://hcservices.ecourts.gov.in/hcservices/>

It is therefore prayed that this Hon'ble Court may be pleased to condone the delay of 287 days in



representing the above application in M.P.S.R.No.20227 of 2015 in S.A.(MD)No.600 of 2007 and pass such further or other orders, as this Hon'ble Court may deems fit and proper in the circumstances of the case thus render justice."

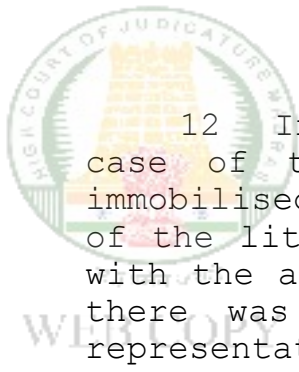
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10 The reason for delay is articulated in paragraph 16 of the affidavit filed in support of the petition, which reads as follows :

"16.I submit that the Registry of this Hon'ble Court returned the papers on 14.05.2015 for certain compliances and thereafter the copy applied in the above second appeal came to be made ready only on 10.09.2015. It is thereafter my counsel sought for certain clarifications as well as for certain documents for inclusion of the same in the typed set of papers. My counsel also sought for the earlier cause list in order to substantiate the plea which I have mentioned in the affidavit filed in support of my original application apart from other details. Unfortunately in the meanwhile, due to my old age, I fell-ill and I was totally immobilized in my home. Now I am aged 74 years and I have various ailments above my age and now after a very hard effort with the assistance of my son, I have come forward with the above application. After receiving all those particulars, I have once again represented the above appeal along with typed set of papers. In the above process there is a delay of 287 days has occasion in representing the papers. The delay is neither willful nor wanton, but only for the bonafide reasons stated hereinabove. If the delay is not condoned, I will be put to immense hardship and irreparable loss. In these circumstances and in the interest of justice that this Hon'ble Court may be pleased to condone the delay of 287 days in representing the above application in M.P.S.R.No.20227 of 2015 in S.A.(MD)No.600 of 2007."

11 Paragraph 16 of the affidavit has been met in paragraph 15 of the counter affidavit which reads as follows :

"15.As regard to Para 16 of the affidavit, I deny the entire allegations and submit that the above facts are being narrated only for the purpose of this case and there is no iota of truth. Since, the petitioner before filing the present petition and Connected appellants in the second appeal has filed S.A.(MD)No.288 of 2006 and S.A.(MD)No.600 of 2007 filed the Civil Revision Petition and Review Application No.41 of 2016 and 69 of 2016 to prolong the case whereas, I have not been allowed by the petitioner herein to enjoy the fruit of my order which I had obtained in the year 30.12.2004 in O.S.No.708 of



12 In this petition, the litigant is 74 years old. It is the case of the petitioner litigant that he fell ill and he was immobilised at home owing to various ailments. It is also the case of the litigant that he has come forward with the instant petition with the assistance of his son with great difficulty and therefore, there was delay in giving inputs required by the counsel for representation.

13 C.M.P.(MD)No.3289 of 2016 has been filed with the following prayer :

"It is therefore prayed that this Hon'ble Court may be pleased to condone the delay of 220 days in representing the above application in M.P.(MD)SR.30469 of 2015 in S.A.(MD)No.803 of 2006 and pass such further or other orders, as this Hon'ble Court may deems fit and proper in the circumstances of the case thus render justice."

14 To be noted, petitioner in C.M.P.(MD)No.3289 of 2016 and the aforesaid C.M.P.(MD)No.3568 of 2016 are same, i.e., Thirumeni @ Packiyawathi. Therefore, the reason for delay and the counter run on the same lines as that of C.M.P.(MD)No.3568 of 2016.

15 C.M.P.(MD)No.7455 of 2016 has been filed with the following prayer :

"For the reasons stated in the accompanying affidavit it is therefore prayed that this Hon'ble Court may be pleased to condone the delay of 213 days in representing the review application against the judgment and decree passed in S.A.No.288 of 2006 dated 30-04-15 and thus render justice."

16 The reasons for delay have been articulated in paragraphs 9 and 10 of the affidavit which read as follows :

"9.I submit that this Hon'ble Court dismissed the appeal on 30-04-15 and I have filed the review application within time. However the same was returned on 30-11-15 for rectification some defects. After taking return my counsel informed me and directed to produce entire back bundle so as to scrutinize since the documents filed on the side of plaintiffs were not available in the bundle. But I was not in a position to hand over the left out the documents and the documents were sent to an advocate at Delhi through my trial court advocate. Immediately after the request I requested the advocate to return the back bundle for pursuing the review application. The Advocate at Delhi also advised since the merits of the matter is not considered in the judgment it can be set right in review and returned the bundle 26-04-16. Thereafter I represented the same on 29-04-16 and it was returned on 07-06-2016.



19 On behalf of the petitioners, reliance was placed on **G.Nagendran Vs. Secretary to Government Corporation, Food and Consumer Production Department, Fort St. George, Chennai-600 009 and others** reported in (2016) 4 MLJ 422. **Nagendran** case is a judgment of a Division Bench of this Court. In **Nagendran** case, the Division Bench relied on an earlier judgment of this court and extracted a portion of the earlier judgment of this court which brings out difference between the petitioner seeking condonation of delay under Section 5, i.e., petitioner seeking condonation of delay in filing and the petitioner seeking condonation of delay in representation. Relevant paragraph reads as follows :

"I may point out in this context the difference between the condonation of delay in the proper presentation of a particular proceeding pursuant to Section 5 of the Limitation Act and, the condonation of delay in the re-presentation of a particular proceeding obviously under the inherent powers of the Court under Section 151 of the Code of Civil Procedure. In the former case there is a specific provision in the statute, namely, the Limitation Act, which imposes an obligation on the Court itself suo motu to reject a proceeding if it is barred by limitation. That strictness is not available or applicable to a case of of a delay in the re-presentation of the proceeding in question. Consequently, the provisions and considerations applicable to excusing the delay under Section 5 of the Limitation Act will not apply to the question of excusing the delay in re-presenting the papers and therefore, the considerations relevant to excusing the delay with reference to petitions, disposable under the Limitation Act, will bear no analogy to those relevant to a decision of the question in the present controversy. In have proceeded on broad considerations and in particular with reference to the distinction between the delay in the presentation of a proceeding and the delay in the re-presentation of the papers with reference thereto. In view of the basis difference between the two, I am of the opinion that the considerations relevant to the former will not apply to the latter and in an application for excusing the delay in re-presenting the papers in any proceeding, whether it be a suit, a civil revision petition, a first appeal or a second appeal in any Court, notice to the respondent in the main case is not necessary and even if such notice is given to the respondent and he is heard and overruling his objection, the delay is condoned, he cannot be said to have been aggrieved in the sense of there being a judicial determination against him so as to entitle him to approach the High Court under Section 115 Code of Civil Procedure. In



view of this, I hold that this petition is not maintainable and reject the same. "

20 **Esha Bhattacharjee Vs. Raghunathpur Nafar Academy** reported in (2013) 12 SCC 649 was also relied on to say that liberal, pragmatic, justice-oriented, non-pedantic approach should be taken in dealing with an application for condonation of delay. The postulates laid down by Hon'ble Supreme Court with regard to delay condonation applications has elucidated in paragraph 21 of **Esha Bhattacharjee** which reads as follows :

"21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1.(i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2.(ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3.(iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4.(iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5.(v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6.(vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7.(vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8.(viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9.(ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is a fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot



be given a total go by in the name of liberal approach.

21.10.(x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11.(xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

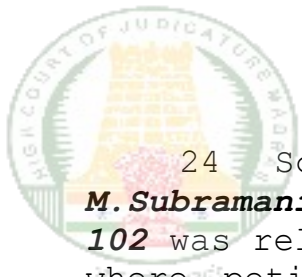
21.12.(xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13.(xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude. "

21 On the side of the petitioner, **Harbans Pershad Jaiswal (D) by Lrs. Vs. Urmila Devi Jaiswal (D) by Lrs.** reported in **2014-4-L.W.791 (SC)** and **Secretary, Deptt. of Horticulture, Chandigarh & Anr. Vs. Raghu Raj** reported in **AIR 2009 SC 514** were also pressed into service. However, these two judgments touch upon Order XLI Rules 17 and 19 CPC and for the principle that the Court can only dismiss for default an appeal in the absence of the appellant counsel. It is not necessary to advert to this principle in this order as this order disposes of only applications seeking condonation of delay in representation. These judgments were placed before me by the petitioners in support of their petitions for rehearing. Therefore, it is not necessary to examine these judgments at this stage in this order as hearing of petitions for rehearing, if it be so, is subject to and dependant upon the outcome of these petitions.

22 On behalf of respondents, **Harbans Pershad Jaiswal** case supra was pressed into service to say that sufficient cause should be shown for non appearance. However, as already alluded to supra, **Harbans Pershad Jaiswal** case turns heavily on Order XLI Rule 19 CPC, the same does not help the respondent also in these applications.

23 Respondents also pressed into service **A.Natesan Vs. P.Erulappan** reported in **2013 (3) MWN(Civil) 58** and **Lanka Venkateswarlu (D) by LRs Vs. State of A.P. and others** reported in **(2011) 5 MLJ 167 (SC)**. Both these cases were pressed into service to say that concepts such as 'liberal approach' and 'justice oriented approach' cannot be employed to jettison the substantial law of limitation. This case pertains to condonation of delay in filing and not condonation of delay in representation. More over, these judgments are those in which delay is long. It runs to over 2000 days in **A.Natesan** case and over 3700 days in **Lanka Venkateswarlu** case.

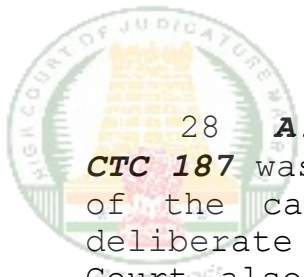


24 Some more judgments on the side of respondents were cited. **M.Subramania Mudaliar Vs. K.Janardhanam** reported in **AIR 1994 Madras 102** was relied on by learned counsel for respondents. This is a case where petitions for condonation of delay in representation were dismissed. This case is distinguishable on facts at least on three aspects. The first aspect is delay therein was as long as six long years. The second aspect of difference is, that is a case where the Court came to the conclusion on facts of that case that there was gross negligence and callous indifference on the part of the petitioner and his counsel. The third aspect of difference is, in that case, the respondent, who was opposing the delay condonation petition, was awaiting an appeal and the learned counsel had written to the petitioner requesting to let them know about the number of appeal so as to enable them to file vakalat and such letter did not evince any reply. As this case is clearly distinguishable on facts and therefore it does not help the respondents.

25 **Lalliammal Vs. Thulasi and 6 others** reported in **2002-1-L.W. 397** was placed before this Court. This case is also clearly distinguishable on facts on two points. The first point is, the Court came to the conclusion on the facts of the case that there was negligence on the part of the counsel in not representing papers within time. The second point of distinction is, on the facts of that case, there were only two returns and both returns did not require any instructions from the client. Returns were provisions of law not being given and batta with full address was not filed.

26 **Urviben Chiragbhai Sheth Vs. Vijaybhai Shambhubhai Joranputra and others** reported in **(2011) 12 SCC 582** was also pressed into service by the counsel for respondents. A perusal of the said judgment reveals that it arises out of a motor accident claim in Motor Accident Claims Tribunal and High Court refusing to enhance the compensation on the ground of consent before Motor Accident Claims Tribunal. In such circumstances, the principle that the records of Motor Accident Claims Tribunal does not have the kind of sanctity which a High Court or the Supreme Court which are Courts of record under Article 215 of the Constitution and Article 129 of the Constitution, respectively have, was restated. There is no difficulty in holding that this case law is not in any manner relevant to the instant petitions.

27 **Postmaster General and others Vs. Living Media India Limited and another** reported in **(2012) 3 SCC 563** was placed before this Court. This again is clearly distinguishable on facts and does not help the respondents as this case pertains to delay in filing (filing S.L.P.) and it is a case where the delay in filing was not condoned as delay condonation petitioner in spite of being afforded an opportunity to file better affidavit by placing adequate materials, did not avail of the same and give any information for not applying for certified copy within prescribed period.



28 **A.Muthusamy Vs. Muniammal and others** reported in **2006 (1) CTC 187** was also relied on. This is again a case where on the facts of the case, the Court came to the conclusion that there was deliberate inaction on the part of the petitioner. In this case, the Court also went into the merits of the matter and held that the petitioner in delay condonation petition has no case on merits. Therefore, this is a case where the delay in representation was not condoned as no useful purpose would be served even if the delay is condoned as the petitioner seeking condonation had no case on merits in the main matter. Therefore, this case also does not help the respondents.

29 This court has carefully examined the rival contentions in the backdrop of the facts of this case and the nature of the petitions, out of which these petitions for condonation of delay in representation arise. In the considered opinion of this court, three factors clinchingly tilt the matter in favour of petitioners and in favour of the prayers for condonation of delay in representation being acceded to.

30 These three factors are as follows :

(a) The entire matter arises out of a partition suit which is primarily between coparceners, though some co-owners / alienees are also litigants / parties to the lis,

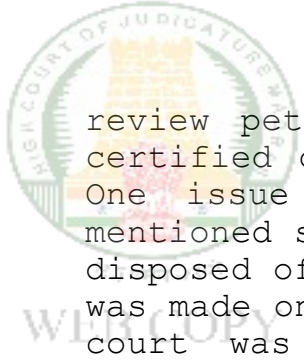
(b) The original petitions for rehearing and review have been diligently filed within the time, and

(c) The grounds on which the original prayers for rehearing and review are made are such that it is necessary to examine the same on their own merits rather than short fusing the same owing to delay in representation.

31 Now, this court deems it appropriate to make a little elaboration on the aforesaid three factors, which tilt the matter in favour of the prayer of petitioners being acceded to.

32 With regard to the first factor, the entire lis arises out of a partition suit amongst coparceners. There are no plaintiffs or defendants in a partition suit. In other words, in the partition suit, all the parties to the lis are plaintiffs and all parties to the lis are defendants too. It is also common knowledge that there is no limitation for partition suit. In any event, the entire proceedings arise out of a preliminary decree in a partition suit, the declaration suit being dovetailed to it, it would be appropriate to accede to the prayer for condonation of delay in representation.

33 With regard to the second point, three petitions for rehearing and one petition for review have been filed very diligently. It is seen that orders were reserved on 01.04.2015 and rehearing petitions filed on 29.04.2015 itself (SR No.20227), 30.04.2015 (SR No.20566) and 20.07.2015 (SR No.30469). Likewise, the

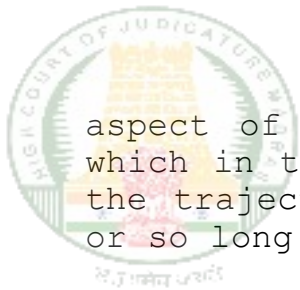


review petition has been filed on 23.11.2015 after obtaining the certified copy of the judgment in the second appeal on 29.10.2015. One issue was raised in this regard. Three second appeals as mentioned supra, i.e., S.A.Nos.288 of 2006, 571 and 600 of 2007 were disposed of on 30.04.2015 by a common judgment and copy application was made on 05.05.2015. It is pointed out that from 01.05.2015, the court was in summer vacation. To be noted, 30.04.2015 was a Thursday. It is pointed out that 01.05.2015 was a holiday on account of May day. Therefore, filing on 05.05.2015 is to be construed as the copy application being filed on the second working day. It is pointed out on behalf of respondents that the court being on summer vacation is of no consequence and if the Registry works, the clock would tick. However, as 01.05.2015 (Friday) was a holiday on account of May day, filing of the copy application on 05.05.2015 has to necessarily be construed as filing of copy application on the second working day. It was submitted by learned counsel for one of the petitioners Mr.H.Arumugam that on an extreme demurrer, even if it is construed that there is delay of 5 days on the part of the petitioners in making the copy application, from 29.10.2015 the petitioner had time till 28.11.2015 to file the review. If this 5 days are subtracted, the review ought to have been filed on or before 23.11.2015 which has actually been done. There is no dispute or disagreement before the court that review petition was actually filed on 23.11.2015 vide S.R.50776. Therefore, whichever way one looks at it, the review petition has been filed within the stipulated time. As mentioned supra, the petitions for rehearing were filed on 29.4.2015 itself (SR No.20227), 30.04.2015 (SR No.20566) and 20.07.2015 (SR No.30469). Therefore, filing of all four petitions is well within the time and petitions have been diligently filed. This second factor strongly enures to the benefit of the petitioners qua their prayers.

34 The last and third factor pertains to the grounds on which the prayers for rehearing and review are predicated. Without going into the merits of the matter and without expressing any opinion whatsoever on the merits of the petitions for rehearing and review, it is to be noticed that petitioners are urging before this court that these petitions have been filed on the basis that the second appeals came to be disposed of without hearing them. It is also urged that second appeals came to be disposed of without answering substantial questions of law. Though the merits of the matter are not gone into in a petition for condonation of delay in representation, it does weigh in the mind of the court in certain circumstances. In the instant case, in a lis arising out of a partition suit as amongst the coparceners, when it is urged by the petitioners that they did not have the opportunity of presenting their case, it would be appropriate to examine the rehearing petitions and review petition on their own merits rather than short fusing the same and shutting out the same merely owing to the delay in representation.

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35 In addition to the aforesaid three factors, one other



aspect of the matter is delay is in the region of 200 odd days, which in the light of the facts of this matter and in the light of the trajectory of these cases cannot be construed to be inordinate or so long to be frowned upon.

36 In the light of the narrative supra and owing to the discussion set out above, this court is of the considered view that the prayers in all these four petitions for condonation of delay in representation deserve to be acceded to. This court does so. In other words, the petitions for delay in representation are allowed. No costs.

37 Registry shall process the petitions for rehearing and review petition further subject to delay petitions therein if any. Petitioners shall take steps to get the rehearing petitions and review petition numbered and listed at the earliest.

sd/-
26/06/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE 1ST ADDITIONAL DISTRICT MUNSIF,
TIRUNELVELI

2 THE PRINCIPAL SUBORDINATE JUDGE, TIRUNELVELI

3 THE PRINCIPAL DISTRICT MUNSIF, TIRUNELVELI.

+4. C.C. to Mr.AH SYED AHAMED Advocate SR.Nos.11445 to 11448

ORDER
IN

C.M.P.(MD) No.3568 of 2016 in S.A.(MD)No.571 of 2007,
C.M.P.(MD)No.3569 of 2016 in S.A.(MD)No.600 of 2007,
C.M.P.(MD)No.3289 of 2016 in S.A.(MD)No.803 of 2006

and

C.M.P.(MD) No.7455 of 2016 in Rev.Aplc(MD)No.SR50776 of 2015
(S.A.(MD)No.288 of 2006)

Date :26/06/2018

SMA/VR/ASVM/19.07.2018:18P/8C