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CMP No.2662 of 2023 and  
OSA (CAD) No.125637 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM :

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR**

**and**

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

**CMP No.2662 of 2023 AMD**

**OSA (CAD) Sr.No.125637 of 2022**

The Karur Vysya Bank Limited,  
Purasawalkam Branch, No.51,  
Gangadeeswarar Koil Street,  
Purasawalkam, Chennai 600 084.

... Appellant

Vs.

1. M/s Denwood Merchandising and  
Industries Private Limited,  
P.Deepak Kothari, aged 43 years,  
s/o P.C.Kothari, 243, Devadarshan Apartments,  
No.1, Barnaby Road, Kilpauk,  
Chennai 600 010.

2. P.Asif Ahmad

3. Safurama Begum

4. P.Akhil Ahmed

5. P.Arif Ahmed

6. Kazale Roohie

.... Respondents



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**Prayer in CMP No.2662 of 2023:** Petition filed under Order XLIII Rule 1 of C.P.C to condone the delay of 184 days in preferring the appeal, as against the order passed by this Court in Application No.3871 of 2021 in C.S.No.352 of 2018, dated 22.10.2021.

**Prayer in OSA (CAD) SR No.125637 of 2022:** Original side Appeal filed under Section 13 of Commercial Court Act, 2015 to set aside the order passed by this Court in Application No.3871 of 2021 in C.S.No.352 of 2018, dated 22.10.2021.

For Appellant : Mr.S.Namasivayam

For Respondents : Mr.K.Surendar for first respondent

No appearance for respondents 2 to 6.

### ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

Challenging the order passed by this Court in Application No.3871 of 2021 in C.S.No.352 of 2018, dated 22.10.2021, the present original side appeal has been preferred along with the instant petition to condone the delay of 184 days in preferring the Appeal.



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2. The first respondent herein had filed C.S.No.352/2018 for recovery of money against the defendants 1 to 6 and the petitioner herein is the 6th defendant in that suit. In the above said suit, all defendants were set exparte and subsequently, exparte preliminary decree has been passed, vide order in A.No.4209/2018 in C.S.No.352/2018, dated 12.09.2018. This petitioner/6th respondent had filed an application in A.No.3781/2021 to set aside the above said exparte preliminary decree and the same was dismissed, vide order dated 22.10.2021. Challenging the above order, this original side appeal has been filed.

3. The learned counsel for the respondents 2 to 6 submitted that the property in question, which was mortgaged while obtaining loan, was already sold to the third party and the amount has been realised by the plaintiff. According to them, no surplus amount is being remained in the above said sale transaction. He further submitted that, in view of the above, the prayer sought for in this petition has become infructuous.



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6. It is to be mentioned that, while filing a case with a delay, each and every day's delay must be explained. But we are not satisfied with the reasons assigned in the affidavit to condone the above said delay. At this juncture, it is worthwhile to note that, with regard to inordinate delay, the Hon'ble Supreme Court in the decision in ***Majji Sannemma alias Sanyasirao Vs. Reddy Sridevi and others reported in 2021 SCC Online SC 1260***, has observed as follows.

18. In the case of *P.K.Ramachandran* (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the Court has to exercise discretion judiciously

19. In the case of *Paundlik Jalam Patil* (supra), it is observed as under:-

" The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim " interest reipublicae ut sit finis litium ", that is,



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the interest of the State requires that there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy".

20. In the case on *Basawaraj* (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression "sufficient cause" cannot be liberally interpreted if negligence, inaction or lack of bonafides is attributed to the party. It is further observed that even though limitation may harshly affects rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bonafides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

21. In the case of *Pundlik Jalam Patil* (supra), it is observed by



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this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and "do not slumber over their rights".

Therefore, in the light of the above decision of the Hon'ble Supreme Court, we are of the considered view that the petitioner has not approached the Court within the reasonable time and also they have not given any bonafide reason to condone the inordinate delay of 184 days, in filing the appeal. Inview of the above and also considering the submission made by the learned counsel for the respondents 2 to 6, the petition to condone the delay is liable to be dismissed and for the same, the original side application cannot be entertained.

7. Accordingly, the petition in CMP No.2662/2023 is dismissed. Consequently, the original side appeal in SR 125637/2022 is also rejected at the SR Stage itself.

**(D.K.K.J.)      (P.D.B.J.)**

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Index : Yes/No  
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and

**P.DHANABAL, J.**

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