



CMP NO.17866 OF 2023
IN OSA SR.NO.99350 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

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IN
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- 1.C.Ramaiah
- 2.RM.Chandramouli alias A.Chandramouli
- 3.RM.Chandramouli S/o. C.Ramaiah
- 4.C.Muthu
- 5.A.Annamalai
- 6.A.Rathinam
- 7.L.A.Lakshmanan
- 8.KR.KR.Sigappi @ L.Sigappi
- 9.RM.Alagappan

.. Petitioners /
Appellants

Vs.

- 1.A.Kothai Atchi (Died)
- 2.Dr.A.Jawahar Palaniappan
- 3.Kumudham Publications Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956
Rep. By its Managing Director
P.Varadarajan S/o. P.V.Parthasarathy
No.151, Purasawakkam High Road,
Chennai – 600 010.



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4.L.Govindan

L.Rathinam (Deceased)

5.L.Murugappan

6.L.Seethalakshmi

7.AL.Vijayalakshmi

8.M.Krishna Meyyammai

(R-1 died, R2 LRs' of the deceased R1.
RR7 and 8 brought on record as LRs'
of the deceased R1 viz., (A.Kothai Atchi)
vide order of Court dated 14.03.2024
made in CMP Nos.20939, 20942 and
20943 of 2023 in OSA SR.No.99350
of 2023)

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Petition filed under Order XIV Rule VIII of Original Side Rules read with Section 5 of the Limitation Act, 1963, seeking to condone the delay of 1321 days in filing the appeal challenging the impugned judgment and decree dated 18th November 2019 made in C.S.No.1008 of 2008.

For Petitioners	:	Mr.S.Thanka Sivan
For Respondent-2	:	Mr.P.S.Raman Senior Counsel for Mr.K.S.Arivazhagan
For Respondents 8&9	:	Mr.Sathish Parasaran Senior Counsel for Mr.G.Vivekanandan



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ORDER

(ORDER OF THE COURT WAS MADE BY R.SUBRAMANIAN, J.)

This Civil Miscellaneous Petition has been filed seeking condonation of a very long delay of 1321 days in filing the appeal against the dismissal of the Suit in C.S.No.1008 of 2008.

2.The said Suit was filed by the appellants seeking a declaration of title and a declaration that certain documents executed between the plaintiffs and the defendants were bad and for a consequential decree for recovery of possession.

3.The Suit came to be dismissed by a judgment and decree dated 18.11.2019. The plaintiffs in the Suit were at least 9 in number. The appeal came to be filed on 31.07.2023 with a huge delay. The reasons assigned for the delay is that an appeal was in fact filed in SR.No.25784 of 2020 on 25.02.2020 just before the declaration of lock-down due to the Pandemic. It is claimed that the learned Senior Counsel who conducted the Suit on behalf of the appellants died during the Pandemic and the representative of the plaintiffs' one Mr.Muthu, who was looking after their



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affairs had taken back the appeal papers from the counsel on record and had shifted his allegiance to the respondents herein. He had therefore not informed the appellants of the fact that the appeal papers were returned. However, after finding that the property is being developed by the respondents, the appellants had approached their counsel and had taken steps to file the appeal afresh after applying for a new certified copy of the judgment. It was also contended that the appellants 1 and 2 are aged persons and their ill-health also prevented from that.

4.This Civil Miscellaneous Petition is resisted by the respondents contending that there are no *bonafides*. The Suit came to be dismissed as early as on 18.11.2019 and after waiting for one whole year, the respondents had entered into a Contract for Joint Development of the property and the construction was almost over in January 2023. It is only thereafter, the plaintiffs had waken from their deep slumber to file this appeal belatedly that too in July 2023.

5.Mr.S.Thanka Sivan, learned counsel appearing for the petitioners / appellants would submit that the delay cause was *bonafide* and the reasons assigned would constitute sufficient cause for condonation.



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6.Contending contra, Mr.P.S.Raman and Mr.Satish Parasaran,

learned Senior Counsel appearing for the respondents would contend that the petition lacks *bonafide* and they waited for the project to be completed to launch this appeal only with a speculative intention. They would also point out that there are almost 9 appellants and except the first and second appellants, the others are fairly young. There is no reason set out in the affidavit as to why the other appellants did not take active steps for prosecuting the appeal particularly when all of them are residents of Tamil Nadu except the fourth appellant who happens to be in Kerala.

7.The learned Senior Counsel appearing for the respondents would also point out that the certified copy of the judgment and decree that has been filed along with this appeal has been made ready even on 01.11.2022 but the appeal came to be filed only on 31.07.2023. There is no explanation for the delay between 01.11.2022 and 31.07.2023 that is almost for a period of 9 months. Absence of any explanation for the delay according to the learned counsels would amount to total negligence on the part of the appellants in prosecuting the appeal and therefore, if we are to condone the delay, we will be encouraging negligence and carelessness in



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conducting proceedings before the Court and in launching proceedings before the Court.

8. We have considered the rival submissions.

9. No doubt, at the first blush, the reasons assigned seem to be *bonafide*. But the delay is not one or two days. It is 1321 days. The appellants are expected to explain the delay satisfactorily. We are not, for a moment, taking a hyper technical view and requiring an explanation for each and every day's delay. We are aware that in matters of delay, the Court has to be flexible and a little lenient particularly when property rights are involved. At the same time, we must also take into account the fact that if third party interests have intervened, during the interregnum and if we unsettle the title that is vested with the respondents today by condoning the delay it will affect third parties who have purchased flats in the multi-storied building that has been developed in the area, admittedly, to the knowledge of the petitioners. Moreover, we find the affidavit itself exhibits total carelessness and negligence on the part of the appellants. Almost 8 out of the 9 appellants are residing within Tamil Nadu and at least 4 of them are



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residing in Chennai and its neighbourhood. The entire affidavit talks about only the appellants 1 and 2 and there is no reason as to why the other appellants did not take any part in the filing of the appeal.

10.Further, as rightly pointed out by the learned Senior Counsel, there is no explanation for the delay between 1st of November 2022 and 31st of July 2023. We are, therefore, unable to conclude that the appellants have made out a sufficient cause for condonation of the delay. Hence, this Civil Miscellaneous Petition fails and it is accordingly, dismissed. The Original Side Appeal is rejected at the SR stage itself. The court fee paid on the memorandum of grounds is directed to be refunded to the petitioners. No costs.

[R.S.M., J.] [R.S.V., J.]

25.03.2024

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AND

R.SAKTHIVEL, J.

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