



C.R.P. (MD) No. 1086 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 29.04.2024**

**CORAM**

**THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU**

**C.R.P. (MD) No. 1086 of 2024**

Alagammal (died)

V.Ramaraj

... Petitioner/  
Second Appellant

-VS-

1.Pitchai

2.Rajaram

... Respondents

**PRAYER:** Petition filed under Article 115 of the Constitution of India, to call for the records and set aside the order of the Sub-Court, Periyakulam in I.A. No. 1 of 2021 in A.S. No. 4 of 2016 dated 20.01.2022 and to order condoning the delay of 1321 days in restoring the appeal in A.S. No. 4 of 2016 on the file of the Sub-Court, Periyakulam.

For Petitioner : Mr. S.Madhavan

For Respondents : Mr. M.P.Senthil



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## **ORDER**

This Civil Revision Petition invoking Article 227 of the Constitution of India, 1950, has been filed against the order dated 20.01.2022 in I.A. No. 1 of 2021 in A.S. No. 4 of 2016 (hereinafter referred to as the 'impugned order' for short) passed by the Sub-Court, Periyakulam (hereinafter referred to as the 'Appellate Court' for short).

2. The parties are hereinafter referred to as per their description in the appeal in A.S. No. 4 of 2016 for the sake of clarity and convenience.

3. Heard Mr. S.Madhavan, Learned Counsel for the Second Appellant and Mr. M.P.Senthil, Learned Counsel for the Respondents, and perused the materials placed on record apart from the pleadings of the parties.

4. The Appellate Court had dismissed the aforesaid appeal for default on 11.04.2017 and the Second Appellant had filed an application to restore the appeal in A.S. No. 4 of 2016 to file along with another application in I.A. No. 1 of 2021 to condone the delay of 1321 days in filing it, which was dismissed by the impugned order.



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5. Inasmuch as the suit relates to valuable rights over property which has severe repercussions on the contesting parties, the Appellate Court ought to have accepted the satisfactory explanation of the Second Appellant for the delay in filing the restoration application by imposing adequate costs on the Second Appellant payable to the Respondents. At this juncture, it would be useful to refer to the dictum laid down by the Hon'ble Supreme Court of India in the decision of *N.Balakrishnan -vs- M.Krishnamurthy* [(1998) 7 SCC 123] , which reads as follows:-

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.



10. The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain v. Kuntal Kumari* [AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality* [(1972) 1 SCC 366 : AIR 1972 SC 749].

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a



salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

In that backdrop, Learned Counsel appearing for the Second Appellant has today paid costs of Rs. 3,000/- (Rupees Three Thousand only) to the Learned Counsel for the Respondents, who has received it without prejudice to the contentions of the Second Appellant on the merits of the controversy involved in the matter and proof of its compliance has been filed.

6. In the aforesaid circumstances, it would be appropriate on the peculiar facts of this case to set aside the impugned order refusing to condone the delay of 1321 days in filing the restoration application, and the appeal in A.S. No. 4 of 2016 is restored to the file of the Appellate Court, before whom the parties shall appear on the next hearing date fixed as 19.07.2024 for conduct of the proceedings following the prescribed procedure affording full opportunity of hearing to them. The Appellate Court shall deal with the each of the contentions raised by the parties, pass reasoned order dealing with each of the contentions raised by the respective parties on merits and in accordance with law. It shall be ensured that there is atleast one effective hearing every week showing progress of the case and quarterly reports of compliance are sent to the Registrar (Judicial) of this Court till it is decided finally.



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In the result, the Civil Revision Petition is ordered on the aforesaid terms. No costs.

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Index : Yes/No

Internet : Yes/No

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To

1.The Sub-Court, Periyakulam

2.The Section Officer,  
Vernacular Records Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.D. AUDIKESAVALU, J.**

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