



CMP(MD). No.2097 of 2024

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction**

Monday, the Twenty Second day of July Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice S.SOUNTHAR

**CMP(MD). No.2097 of 2024
in
S.A.No.1073 of 1999**

1. Balakrishnan

2. Rengasamy(Died) ... 1 & 2 Petitioners / Appellants

3. R.Meenatchi

4. R.Muruganantham

5. R.Veeravanmathi ... 3 to 5 Petitioners / LR's of the
2nd Appellant

-Vs-

1. Vasambal (Died)

2. Gajendran

3. Vijaya,

4. Malathi,

5. Saroja, ... Respondents/ Respondents



CMP(MD). No.2097 of 2024

Prayer in CMP(MD). No.2097 of 2024 in S.A.No.1073 of 1999 :-

WEB COPY

Civil Miscellaneous Petition files Under Section 5 of Limitation Act to condone the delay of 65 days in filing the restore application to restore CMP.(MD). No.743/2021 in M.P(MD)No.1 of 2011 in S.A.No.1073 of 1999, which was dismissed on 09-06-2022 for non prosecution of case and pass such other and further orders deemed fit and proper in the facts and circumstances of the case and thus render justice.

Prayer in CMP.(MD).No.743/2021 in M.P(MD)No.1 of 2011 in S.A.No.1073 of 1999 :-

Civil Miscellaneous Petition files Under Section 5 of Limitation Act to condone the delay of 2960 days in filing the application to restore M.P(MD)No.1 of 2011 in S.A.No.1073 of 1999, which was dismissed on 01.08.2022.

Prayer in M.P(MD)No.1 of 2011 in S.A.No.1073 of 1999 :-

Miscellaneous Petition files Under Order 41 Rule 19 of C.P.C., to set aside the order of dismissal for default dated 31.03.2011 made in S.A.No.1073 of 1999.



CMP(MD). No.2097 of 2024

Prayer in S.A.No.1073 of 1999 :-

WEB COPY

This Second Appeal has been filed Under Section 100 of C.P.C., against the Judgment and Decree dated 04.08.1999 made in A.S.No.33/1996 on the file of the District Judge, Thanjavur, by confirming the Judgment and Decree dated 16.02.1996 made in O.S.No.224/1995 on the file of the Sub Judge, Pattukkottai.

ORDER:-

This Civil Miscellaneous Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru.V.Lakshmanan, Advocate for the Petitioner and of Thiru.M.R.S.Prabhu, Advocate for Mr.V.K.Vijayaraghavan, Advocate for 2nd Respondent and 3rd and 4th Respondents not appearing either in person or by an Advocate and 1st and 5th Respondents are died, this Court made the following order:

This Petition is filed to condone the delay of 65 days in filing the Petition to restore the Petition in C.M.P(MD)NO.743 of 2021 in M.P(MD)No.1 of 2011 in S.A.No.1073 of 1999, which was dismissed for default on 09.06.2022.

2.It is seen from the records that the main S.A.No.1073 of 1999 was dismissed for default on 31.03.2011 for non-appearance of the Petitioners/appellants.



CMP(MD). No.2097 of 2024

Thereafter, the Petitioners filed M.P(MD)NO.1 of 2011 to restore the Second Appeal which was dismissed for default. In the said restoration application, the Petitioners failed to take any steps to serve respondents 1 to 5 and they also failed to appear before the Court, when the matter was called. Therefore, M.P(MD)No.1 of 2011 was dismissed for default by passing the following order on 01.08.2022:

“No representation on behalf of the Petitioner/appellant. No steps have been taken to serve R1 to R5 in M.P.NO.1 of 2011. Therefore, this Petition is dismissed for default.”

3. Thereafter, without restoring the Petition in M.P(MD)No.1 of 2011 which was dismissed for default, the Petitioners filed C.M.P(MD)No.8004 of 2019 to restore the main Second Appeal straight-away. The said application came to be dismissed by this Court by order, dated 23.09.2019. While dismissing the said petition, this Court had taken note of the suppression of material facts by the Petitioners regarding the dismissal of the restoration application. The relevant observation made by this Court reads as follows:

“3. In the present petition, the Petitioners/appellants did not aver about earlier restoration petition filed by them and dismissal of the same for default and they have suppressed the same. The only reason stated by the

Petitioners/appellants for condoning 2922 days of delay in filing a petition



CMP(MD). No.2097 of 2024

for restoration is that the delays of delay in filing a petition for restoration is that the earlier counsel did not convey the message of dismissal of the appeal. It is the duty of the parties to take follow up action. Now, the Petitioners/appellants cannot put any blame on the counsel, having slept over years together without taking any follow up action. In view of the aboe, the reason stated by the Petitioners/appellants cannot be accepted for condoning the enormous days of delay.

4.Moreover, the reason assigned by the Petitioners/appellants is nothing but utter lie, in view of the fact that they have filed earlier restoration petition ie. M.P(MD)No.1 of 2011 immediately after dismissal of the appeal for default and they left the earlier restoration petition for default without even taking steps to sent notice to the respondents.The Petitioners/appellants have not come up with clean hands. Hence, this Court is not inclined to condone the delay."

After observing so, C.M.P(MD)No.8004 of 2019 was dismissed by this Court, on merits.

4.Thereafter, the Petitioners filed C.M.P(MD)No.743 of 2021 to restore M.P (MD)No.1 of 2011. Again, the Petitioners failed to appear before the Court and hence, the same was dismissed for default. Now, the present application has been filed to restore C.M.P(MD)No.743 of 2021, which has been dismissed for default, with a delay of 65 days. In the affidavit filed in support of the Petition, it was stated



CMP(MD). No.2097 of 2024

by the Petitioners that when the C.M.P was posted for hearing on 09.06.2022, neither he nor his counsel appeared before the Court due to their old age. The Petitioners have not given any convincing reason for their failure to appear before the Court, when the matter was called. It is not the first time, the Petitioners have committed default. A perusal of the typed-set of papers filed by the second respondent and the relevant records would suggest that this is the third time, the Petitioners have committed default. In the meantime, he also made an attempt to restore the Second Appeal without disclosing the dismissal of M.P(MD)No.1 of 2011.

5. Therefore, taking into consideration the conduct of the Petitioners, this Court feels that the vague reasons assigned by the Petitioners to condone the delay, is not acceptable and hence, the present application for condonation of delay is dismissed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/08/2024

Sub Assistant Registrar
(CS-I, II, III, IV)

vsn

<https://www.mhc.tn.gov.in/judis>



CMP(MD). No.2097 of 2024

TO COPY

1. The District Judge, Thanjavur.
2. The Subordinate Judge, Pattukkottai.

Copy to:

The Section Officer,
Judicial Section,
Madurai Bench of Madras High Court, Madurai.

+ 2 CC to Mr.V.Lakshmanan, Advocate in Sr.No. 36002 / 2024.

ORDER DATED : 22/07/2024

=====

ORDER

=====

CMP(MD). No.2097 of 2024

in

S.A.No.1073 of 1999

Giving direction and etc.
as stated within.

RD(05/08/2024) 7P / 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.