



C.R.P.No.2214 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2214 of 2025

Ramanujam (died)

1.Arivazhagan

2.Azhakar

3.Sankumathi

4.Malliga

... Petitioners

Vs.

Kaliyaperumal

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the fair and decretal order dated 04.08.2022 passed in I.A.No.1 of 2020 in O.S.No.159 of 1995 on the file of the District Munsif-cum-Judicial Magistrate Court, Sendurai, dismissing the petition filed by the petitioners/1st defendant's legal heirs under Section 5 of the Limitation Act to condone the delay of 1639 days in filing an application to set aside the *ex parte* decree dated 28.01.2016 passed in O.S.No.159 of 1995.

For Petitioners : Mr.R.Venkatesulu

For Respondent : Mr.P.Dinesh Kumar



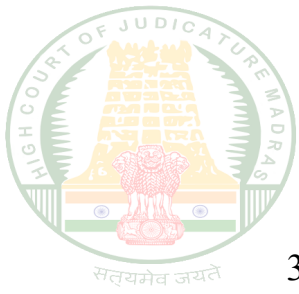
C.R.P.No.2214 of 2025

ORDER

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Challenging the order of the District Munsif-cum-Judicial Magistrate, dated 04.08.2022, passed in I.A.No.1 of 2020 in O.S.No.159 of 1995, dismissing the application to condone the delay of 1639 days in filing the application to set aside the *ex parte* decree, the present revision has been filed.

2.The suit has been filed by the respondent for declaration and possession. The suit has been filed originally against one Ramanujam (1st defendant). During the pendency of the suit, the said Ramanujam died and therefore, the present petitioners have been impleaded as defendants in the pending suit. Despite summons being served on them, the petitioners did not appear before the trial Court and hence, they were set *ex parte* on 16.11.2015. After recording *ex parte* evidence, the suit was decreed *ex parte* on 27.01.2016. Thereafter, after a delay of 1639 days, the petitioners have filed the present application to condone the delay in filing the application to set aside the *ex parte* decree.



C.R.P.No.2214 of 2025

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3.The main ground on which the present application has been filed is that the counsel who appeared for the petitioners before the trial Court did not appear before the Court due to his old age and therefore, the petitioners were set *ex parte*. It is their contention that, only at the stage of execution proceedings, they came to know about the *ex parte* decree, and therefore, the delay had caused. The said application was opposed by the respondent indicating that summons were served on the petitioners and they were aware of the proceedings and the suit has been decreed *ex parte* for their non-appearance. It is the contention of the respondent that each day's delay has not been explained and only in order to protract the proceedings, such application has been filed.

4.The trial Court, after considering the entire aspects, found that there was no sufficient cause shown to condone such huge delay and dismissed the application. Hence, the revision.

5.Learned counsel for the revision petitioners would submit that the delay is only due to the non-appearance of the erstwhile counsel before the trial Court. Therefore, the petitioners have to be given an opportunity to



C.R.P.No.2214 of 2025

contest the matter on merits.

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6.I have perused the entire materials available on record.

7.Except a bare allegation that the counsel did not appear before the Court and therefore, they were set *ex parte*, there is no other plausible explanation given by the petitioners for such a huge delay. Just by making allegations against the counsel engaged by them without any substance, as a matter of right, the parties cannot take advantage to seek indulgence of the Court to set aside the *ex parte* decree which is passed more than three years back.

8.Of course, the word “sufficient cause” under Section 5 of the Limitation Act would normally receive a liberal approach to advance substantial justice. However, at the same time, in order to show indulgence and exercise discretion to condone the delay, the reasons assigned must be *bona fide* and acceptable one. The delay is abnormal in this case. However, the reason assigned by the petitioners for such a long delay is not satisfactory. When the summons were served on the petitioners and they



C.R.P.No.2214 of 2025

have engaged a counsel, it is for them to follow up the matter diligently.

Having allowed the suit to be decreed *ex parte* and having slept over for a period of more than three years, the petitioners, as a matter of right, cannot seek indulgence of the Court to condone the negligence on their part, that too, based on bald allegations without any plausible explanation to the satisfaction of the Court and they cannot make an attempt now to unsettle the position already settled. The baseless allegation that their counsel did not appear before the trial Court, in the view of this Court, is invented only for the purpose of filing the present application and protracting the matter.

9.The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration, as the fundamental principle is that 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. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself. The petitioners ought to have been vigilant in pursuing



C.R.P.No.2214 of 2025

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the litigation and the callous attitude of the petitioners cannot be brushed aside while deciding an application under Section 5 of the Limitation Act.

Therefore, once the delay has not been explained and allegations have not been proved in the manner known to law, as a matter of right, the petitioners cannot seek indulgence of the Court to condone their negligence in not prosecuting the matter.

10. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs.

06.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The District Munsif-cum-Judicial Magistrate,
Sendurai.

N. SATHISH KUMAR, J.



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C.R.P.No.2214 of 2025

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C.R.P.No.2214 of 2025

06.06.2025