



C.R.P.No.1735 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.1735 of 2025
and
C.M.P.No.9979 of 2025

Latha Mangesh

... Petitioner

Vs.

Velmurugan

... Respondent

Prayer : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 06.11.2024 in I.A.No.1 of 2021 in O.S.No.795 of 2016 on the file of the I Additional Subordinate Court, Coimbatore.

For Petitioner : Mr.G.Mageshkumar

For Respondent : Mr.K.Sudhakar

ORDER

Challenging the order of the I Additional Subordinate Court, Coimbatore, dated 06.11.2024, made in I.A.No.1 of 2021 in O.S.No.795 of 2016, allowing the application to condone the delay of 1697 days in filing



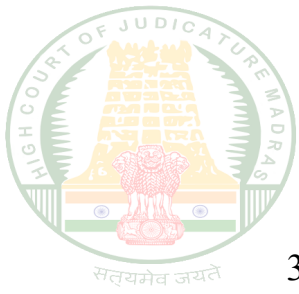
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the application to set aside the *ex parte* decree, the present revision has been filed.

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2. Brief facts leading to the filing of this revision are as follows :

The suit was originally filed by the petitioner for specific performance on the basis of the registered sale agreement dated 08.02.2016. In the said suit, summons were served on the defendant/respondent and on 03.10.2016, the respondent appeared through his counsel. The matter was posted for filing written statement on 02.10.2017. However, the written statement has not been filed. Despite giving several adjournments, since written statement was not filed, the respondent was set *ex parte* and an *ex parte* decree came to be passed in the suit on 22.03.2017. Thereafter, the petitioner has filed the Execution Petition in E.P.No.520 of 2018 and the respondent was set *ex parte* even in the Execution Petition by order dated 12.12.2018. Thereafter, it appears that the Execution Petition has also now been terminated after execution of the sale deed and ordering delivery of possession.



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3.The respondent has filed an application in E.A.No.1 of 2020 to condone the delay in filing the application to set aside the *ex parte* order in the execution proceedings. In the meanwhile, the respondent has also filed the present application to condone the delay of 1697 days in filing the application to set aside the *ex parte* decree in the suit. The reason assigned for such huge delay is that the respondent was suffering from jaundice and taking treatment at Kerala and due to the continuous treatment undergone by him, his Doctor had advised him not to move from the place. It is his contention that, only when the proceedings reached the execution stage, he came to know about the *ex parte* decree. Therefore, the respondent sought to condone the delay. Though the application was opposed by the petitioner, the trial Court has allowed the application with costs. Challenging the same, the present revision has been filed.

4.Learned counsel appearing for the revision petitioner would submit that the trial Court has condoned such huge delay without any basis. It is his contention that, in the entire affidavit filed by the respondent in support of the application, there was no sufficient cause shown to extend the liberal approach by the Court.



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5. Whereas, the learned counsel for the respondent would submit that the trial Court has rightly exercised its discretion by appreciating the reasons assigned. It is his contention that, once the trial Court has exercised its discretion in condoning the delay and offered one more opportunity to the respondent to contest the matter on merits, normally the revisional Court will not interfere with the same. Further, it is his contention that, for the period under lockdown on account of Covid-19 Pandemic, viz., March 2020 to 2022, limitation has been exempted by the Hon'ble Supreme Court and the delay has to be calculated only from the date of *ex parte* decree till the outbreak of Covid-19 Pandemic, which works out to 1150 days and not 1697 days.

6. Heard the learned counsel on either side and perused the entire materials available on record.

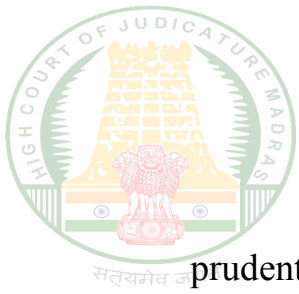
7. Though it is projected as if the delay is only 1150 days and not 1697 days, the length of the delay does not matter, but what is relevant is whether the respondent has shown sufficient cause and given justifiable



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reasons to extend the discretion to condone the huge delay. Admittedly, there is a delay of more than 1000 days in this case. The suit is laid on the basis of a registered sale agreement. It is not the case that summons were not served on the respondent. In fact, summons were served and the respondent has engaged a counsel. Only due to non-filing of written statement, the respondent has been set *ex parte* and thereafter, *ex parte* decree came to be passed in the suit.

8.Though the word “sufficient cause” under Section 5 of the Limitation Act is elastic enough to enable the Court to apply law in a meaningful manner to subserve the ends of justice, the fact remains that, to enlarge such discretion to the parties to advance substantial justice, the reasons assigned by the parties should be true and justifiable and there must be sufficient cause. As held, the length of delay does not matter, but only the *bona fides* of the reasons averred before the Court of Law, matters. In the given case, the contention of the respondent that he was suffering from jaundice and was taking treatment in Kerala, is nothing but bereft of details. The particulars regarding the nature of treatment, the name of the hospital in which he was taking treatment, are totally absent. It is common sense that a

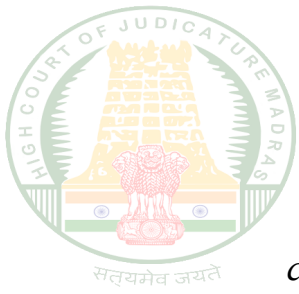


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prudent person, who has taken treatment continuously for more than three years, should atleast give the name of the hospital where he was undergoing treatment, which has not been done in this case. Very casually, the present application has been taken out by the respondent without any substance.

9.Learned counsel for the respondent placed reliance on the judgment of the Hon'ble Supreme Court in ***N.Balakrishnan v. Krishnamurthy*** reported in ***AIR 1998 SC 3222***, wherein, the Hon'ble Supreme Court has held 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 want of acceptable explanation whereas in certain other cases delay of 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 whole untenable grounds or arbitrary or perverse. But it is a different matter when the first cut refuses to



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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.

...

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 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 a 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.”

10.Even in the above judgment, the Apex Court has clearly held that, even sometimes, the shortest delay may not be condonable due to want of acceptable explanation. Ultimately, the above judgment also makes it clear



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that the explanation must be satisfactory, reasonable and *bona fide*.

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11.Learned counsel for the revision petitioner relied upon a judgment of the Hon'ble Supreme Court in ***Majji Sannemma @ Sanyasirao v. Reddy Sridevi and others [Civil Appeal No.7696 of 2021, dated 16.12.2021]***, wherein, the Hon'ble Supreme Court has referred to several judgments, in particular, the judgment in ***Basawaraj and another v. Special Land Acquisition Officer [2013 (4) SCC 81]***, wherein, the Apex Court has held that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of *bona fides* is attributed to the party. It is further observed therein 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 and in case a party has acted with negligence, lack of *bona fides* or there is inaction, then there cannot be any justified ground for condoning the delay even by imposing conditions. It is further observed that each application for condonation of delay has to be decided within the framework laid down by the Hon'ble Supreme Court. It is further observed that, if Courts start



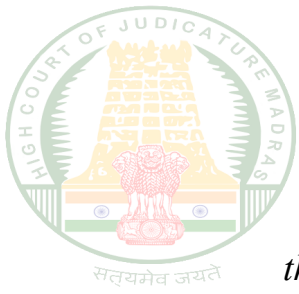
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condoning delay where no sufficient cause is made out imposing conditions, then that would amount to violation of statutory principles and showing utter disregard to legislature.

12.The learned counsel for the revision petitioner also relied upon a judgment of the Hon'ble Supreme Court in ***Thirunagalingam v. Lingeswaran and another [Unnumbered Civil Appeal arising out of SLP (C) No.17575 of 2023, dated 13.05.2025]***, wherein, the Apex Court has held as follows :

“31.It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

32.Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In



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the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.

33. Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.”

13. Therefore, without assigning *bona fide* and justifiable reasons, as a matter of right, the respondent cannot seek indulgence of this Court for his negligence in not prosecuting the matter. Having allowed the suit to be decreed *ex parte* and having slept over the matter for more than five years, the respondent now seeks to unsettle the settled issues. The only reason assigned by the respondent that he was suffering from jaundice for more than three years, is improbable.

14. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to



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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 respondent was well aware of the suit proceedings and has slept over his right by not filing the written statement and therefore, he was set *ex parte*. Further, it appears that the respondent has been set *ex parte* even in the execution proceedings. Therefore, it is very clear that the respondent was shown his lackadaisical attitude towards the litigation, though aware of the consequences of the judicial proceedings. The respondent has now come up with the present application, that too, with false explanation, only in order to defeat the rights of the petitioner/deed holder, who has even got the sale deed executed in her favour in the execution proceedings.

15. Having entered appearance in a suit and allowed it to be decreed *ex parte* and even having allowed the execution proceedings to reach its



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finality in favour of the decree holder, all of a sudden, after long number of years, the respondent cannot wake up from a deep slumber and claim that he was suffering from jaundice and therefore, he could not prosecute the suit. Such a reason, in the view of this Court, is invented only for the purpose of filing the present application. Once the delay has not been explained to the satisfaction of the Court and allegations have not been proved in the manner known to law, as a matter of right, the respondent cannot seek to unsettle the settled issues, particularly when the proceedings have reached its logical end. Even for the Court to extend its discretion to lien in favour of a party, he/she should assign *bona fide*, justifiable and probable reasons, however, this Court is of the view that this is not a fit case for such an exercise. Therefore, this Court is of the view that the order of the trial Court extending such liberal approach in this case, warrants interference.

16. Accordingly, this Civil Revision Petition is allowed and the order dated 06.11.2024 in I.A.No.1 of 2021 in O.S.No.795 of 2016 on the file of the I Additional Subordinate Court, Coimbatore, is set aside. Consequently, the application in I.A.No.1 of 2021 in O.S.No.795 of 2016 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.



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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The I Additional Subordinate Judge,
Coimbatore.

N. SATHISH KUMAR, J.

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