



A NO. 1300 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2025

CORAM

WEB COPY

**THE HONOURABLE MR JUSTICE K.KUMARESH BABU**

**A NO. 1300 of 2023**

Thamiraparani Investments Private Limited and 2 others  
Rep.by its Director Mr.V.Gopal, Having its registered office at  
No.4/35, Swaminathan Nagar Extension, Kottivakkam, Chennai  
600 041. and 2 Others

Applicant(s)

Vs

S.Kavitha  
W/o.Mr.G.Ramanan, Residing at Thalaikadu House, Periyar Nagar,  
Chennai 600 091.

Respondent(s)

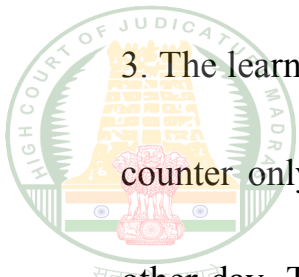
**For Applicant(s):** Ms.S.AArthi

**For Respondent(s):** Mr.K.V.Babu  
for Mr.D.Sai Kumaran

### **ORDER**

The present application had been filed to condone the delay of 6716 days in curing the defects in the suit in C.S.DR.No.12292 of 2004.

2. Heard Ms.S.Aarthi, learned counsel for the applicant and Mr.K.V.Babu, learned counsel for Mr.D.Sai Kumaran, learned counsel for the respondent.



3. The learned counsel for the applicant contended that he had been served with the counter only now and therefore, she had requested this Court to have the matter on some other day. This Court had called upon the applicant to first substantiate his claim under the

WEB COPY

application, considering the fact that the suit had been presented before this Court in the year 2004 and that the application to condone the delay in representation had been presented before this Court in 2023. Hence, the learned counsel for the applicant made his submissions.

4. Ms.S.Aarthi, learned counsel for the applicant would submit that the applicant had filed the suit against the defendant for a declaration that the Power of Attorney executed by the defendant in favour of the plaintiffs is a Power of Attorney coupled with interest in respect of the suit scheduled property and also to declare the subsequent cancellation of the Power of Attorney as *void abinito* with further prayers of a permanent injunction restraining the defendant from claiming or in any manner dealing or alienating the suit scheduled property, directing the defendant to handover the suit scheduled property to the plaintiffs and also for the damages towards trespass and use and occupation. After filing the suit through the earlier counsel, the erstwhile Counsel had given up his Vakalat setting out certain personal reasons. Once the case records are received from the previous counsel, the papers were handed over to the present counsel for rectification of the defects in the same. Only at that point of time, it



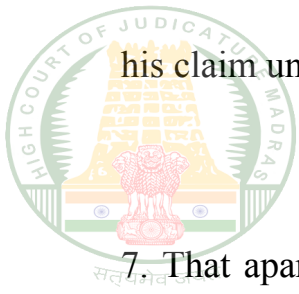
ects

WEB COPY

had come to the knowledge that even though the suit had been filed within time, the representation had not been cured and the juniors attached to the earlier counsel had failed to track the suit. In the said process, there has occasioned a delay of 6760 days in complying with the said representation.

5. Even though the present counsel was regularly following up with the earlier counsel for rectifying the defects, since there has been a change in the pecuniary jurisdiction of the Court, the plaint could not be represented within the stipulated time. That apart, he would submit that the earlier counsel had faced a serious tragedy wherein he had lost both his son and wife, who are Advocates. In that process, the delay had occurred and she would submit that if the delay is not condoned, he would be put to irreparable loss and undue hardship. Therefore, she pleads this Court to condone the delay.

6. Countering his arguments, Mr.K.V.Babu, learned counsel for the respondent would submit that the erstwhile Counsel are still effectively practising in this Court and the reasons attributed are only imaginary to gain sympathy of this Court. He would submit that the applicant ought to have been diligent enough to prosecute his case and cannot turn in the blame in the Counsels for such inordinate delays. He would further submit that the applicant had not placed on record any affidavit of the erstwhile Counsel or his office to substantiate



his claim under the present affidavit.

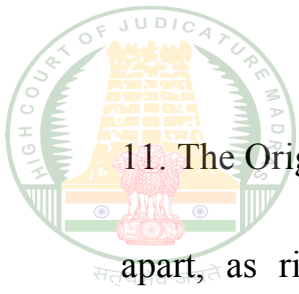
WEB COPY

7. That apart, he would submit that no dates have been given as to when the plaintiffs had approached the erstwhile Counsel for return of the bundle from them and when it had been handed over to the present counsel. All these are bereft of any material facts and therefore, he would seek dismissal of the application.

8. I have considered the rival submissions made by the learned counsels appearing on either side and perused the materials available on record.

9. The suit had been presented before this Court as early as in the year 2004 and had been returned by the Registry for certain compliances of defects noted therein on 26.08.2004. One of the defects that had been pointed out is payment of deficit Court fee. The said papers were represented before this Court only in 14.02.2023 by the present counsel.

10. A reading of the affidavit would disclose that the reasons attributed for the delay was due to the earlier counsel which arose out of the death of his wife and son in quick succession. There is no details from which date the erstwhile Counsel stopped attending Court nor there are no details as to when the erstwhile Counsel gave up his Vakalat.



11. The Original Side Rules prescribes procedure for an Advocate to revoke his Vakalat. That apart, as rightly pointed out by the learned counsel appearing for the respondent, no

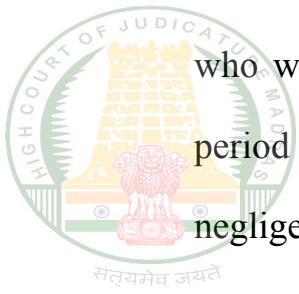
WEB COPY

supporting affidavit of the said counsel or either the juniors who had entered appearance along with the said counsel, had been placed on record to substantiate the claim of the applicant. Further, the sequence of the events narrated above do not give any dates for this Court to comprehend the delay.

12. When a litigant had approached this Court, it is his duty to remain diligent. Having filed a suit in the year 2004, the applicant had not indicated in his affidavit what steps he had taken to follow up with the lis with the erstwhile Counsel. Even he has not bothered to mention the date on which the erstwhile Counsel had given his change of vakalath. Therefore, this Court do not find any merits in the application.

13. This Court is fortified by the judgements of the Hon'ble Apex Court reported in **2004 SCC online 3380** and **2012 (12) SCC 693**. In the judgment reported **2024 SCC online 3380**, the Hon'ble Apex Court has held as follows:-

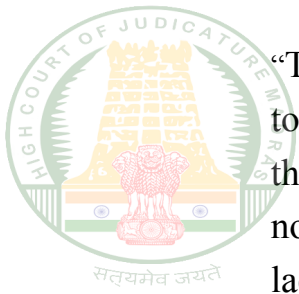
“...10. It appears that the entire blame has been thrown on the head of the advocate



who was appearing for the petitioners in the trial court. We have noticed a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, cannot be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief...”

In the judgement reported in **2012 (12) SCC 693** the Hon'ble Apex Court has held as follows:-

“...14. In our view, if there was any iota of truth in the respondent's story that the certified copies of the documents were misplaced by the office of his counsel and the same were noticed by the counsel on 2-3-2010 while preparing arguments in AS No. 200 of 2001, the minimum which he was expected to do was to file an affidavit of the advocate concerned. Why he did not do so has not been explained by the respondent. Notwithstanding this, the learned Single Judge assumed that the counsel to whom the appellant is said to have handed over the documents was remiss in the performance of his duties and on that account, the same got tagged with another file resulting in the delay. This is evinced from the following observations made in the impugned order [*B. Damodar Reddy v. B. Madhuri Goud*, CCCA No. 45 of 2011, order dated 11-3-2011 (AP)] :



WEB COPY

“The explanation for the delay is that the petitioner had entrusted the bundle to his counsel so as to prefer an appeal, but the counsel seems to have placed the bundle in another bundle i.e. in AS No. 200 of 2001 and the same was noticed when the said case came up for hearing. No doubt, there are some lapses on the part of the counsel for the petitioner in keeping the record in another bundle and in filing the appeal in time immediately after the judgment and decree of the trial court, even though the petitioner has entrusted the bundle to him to enable him to file an appeal, but those lapses cannot be attributable to the petitioner. For the lapses committed by the counsel, the party cannot be made to suffer. Therefore, the delay has been satisfactorily explained.”

14. In our view, the statement made by the respondent about misplacement of the documents by the office of the advocate is vague to the core and the learned Single Judge committed grave error by entertaining the fanciful explanation given for 1236 days' delay...”

15. In view of the above discussion, the application stands dismissed.

**16-04-2025**

To

1. S.Kavitha

W/o.Mr.G.Ravanan, Residing at Thalaikadu House, Periyar Nagar,  
Chennai 600 091.