



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.10.2025
Pronounced on	05.11.2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA**CMP No. 4599 of 2022 in****S.A.No.738 of 2009**

Jayaraman Pillai (died)

1. Gogulakrishnan
2. Narmatha

Both are residing at:

Old Nos.35 and 36,
New.No.86, Jayaram Lodge,
Senkzhuneer Pillaiyar Koil Street,
Chidambaram -608001.

..Petitioners /

Respondents 2 & 3

Vs

Sri Dharmapuram Adheenam,
Rep. By its Adheenakartha,
Sri-La-Sri Shanmuga Desiga,
Gnanasambanda Paramacharya Swamigal,
Dharmapuram, Mayiladuthurai,
Nagapattinam District.

..Respondent /

Appellant



PRAAYER : Petition filed under Section 5 of the Limitation Act, to condone the delay of 935 days in filing the petition to re-hear the Second Appeal in SA.No. 738 of 2009.

For Petitioner(s): T.S.Baskaran

For Respondent(s): Mr.B.Jawahar

ORDER

This Civil Miscellaneous Petition has been filed to condone the delay of 935 days in filing the petition to re-hear the Second Appeal in SA.No. 738 of 2009.

2. The petitioners are the respondents 2 and 3 in the Appeal preferred by the appellant in S.A.No.738 of 2009. In a suit filed by the respondent / plaintiff / appellant for eviction, the Trial Court had decreed the suit. The First Appeal preferred by deceased first defendant in A.S.No.62 of 2007 has been allowed by setting aside the judgment of the Trial Court. Hence, the respondent / plaintiff has preferred this Second Appeal challenging the judgment of the First Appellate Court. However, due to the non-appearance of the petitioners / respondents 2 & 3, the Second Appeal was heard in their absence and was allowed on 19.07.2019.



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3. Now, the learned counsel for the petitioners submitted that the deceased father of the petitioners was taking care of the litigation and he died in the year 2014. The petitioners were not aware of the pending Second Appeal. Only after the petitioners received notice from the learned counsel for the appellant that the hearing has been posted to 11.07.2019, they came to know about the pending Appeal. As it was a very short date, the petitioners could not arrange any counsel to represent on their behalf. The petitioners had met their counsel in the second week of August 2019 presuming that the Appeal is still pending. But later, they came to know that the Appeal came to be dismissed.

4. Even in the affidavit of the petitioners, it is stated that the petitioners were asked by the counsel engaged by them to give case papers in the year 2019, however, due to Covid-19, they could not equip with the case papers. On 01.03.2022, the petitioners were served with notice in an Execution Petition and thereafter, they contacted the counsel and came to know that the Appeal was heard in their absence and allowed.

5. Per contra, the learned counsel for the respondent / appellant submitted that pending the Appeal, the father of the petitioners Jayaraman died and the respondent had filed an application to implead these petitioners as legal heirs of



the deceased Jayaraman. He further submitted that notice were served on them to appear before the Court, despite, they did not choose to appear.

6. The above contention of the respondent / appellant has to be accepted in view of the fact that the petitioners themselves have stated in the affidavit that they contacted the counsel during July 2019 by knowing the hearing date as 11.07.2019. After having known about the pending Second Appeal, they engaged a counsel. The petitioners ought to have been vigilant in pursuing the Second Appeal proceedings. The learned counsel for the respondent has also sent various intimations to the petitioners. But, they did not respond to such communications also. Hence, the Second Appeal has been heard in their absence. Having known that the Second Appeal was disposed in the year 2019 itself, if the petitioners failed to take any further steps until 2022, it is solely at their risk.

7. The petitioners have been in enjoyment of the suit property for nearly 35 years. The petitioners had filed an application before the Execution Court to stay the proceedings by citing the pendency of this Petition. The application seeking stay was dismissed and the Civil Revision Petition filed by the



petitioners challenging the said order in CRP.No.3318 of 2025 has also been dismissed on 19.08.2025.

8. It appears that the petitioners are taking advantage of the pending proceedings in Execution Petition for continuing possession in the property and this Petition to condone the delay has been filed to gain further time. In fact, this Civil Miscellaneous Petition itself has been filed in the year 2022. During the pendency of the Civil Miscellaneous Petition also, the petitioners were continued to be in possession of the subject property.

9. The suit has been filed for recovery of possession by the owner / respondent herein for eviction on the ground of wilful default in paying the rent. Notice to terminate the tenancy of the petitioners' father under Section 106 of Transfer of Property Act has also been given long back and notice period had also come to an end and thus the tenancy was terminated.

10. The suit property belonged to the respondent Charitable Trust. The petitioners cannot prolong the possession even after the lease has been terminated long back. The reason for the delay as stated by the petitioners in the affidavit has also not been proved in view of the fact that they knew about the



pendency of the Second Appeal through their counsel. As this Petition can be seen only as one more tactics adopted to cause further delay and also by considering the fact that the lease granted in favour of the petitioners' father has been terminated long back, I am not convinced to consider this Petition positively in favour of the petitioners.

11. In the result, this Civil Miscellaneous Petition is dismissed. No costs.

05-11-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
GSK



CMP No. 4599 of 2



To

Sri Dharmapuram Adheenam
Rep. By Its Adheenakartha, Sri-la-sri Shanmuga
Desiga Gnanasambanda Paramacharya Swamigal,
Dharmapuram, Mayiladuthurai Nagapattinam Dist.



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DR.R.N.MANJULA, J.

GSK

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S.A.No.738 of 2009

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