



C.R.P.No.909 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.909 of 2025
and C.M.P.No.5292 of 2025

Rajamani

... Petitioner

Vs

Vasathakala @ Vasanthanila

... Respondent

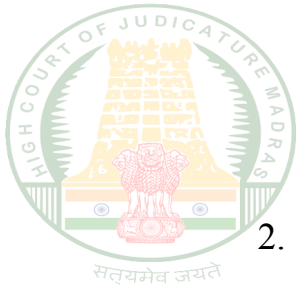
PRAYER : Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleaded to set aside the order dated 13.12.2024 passed by the learned Subordinate Judge, Rasipuram, in I.A.No.1 of 2021 in O.S.No.284 of 2008.

For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.B.Jawahar

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Subordinate Judge, Rasipuram, on 13.12.2024 in I.A.No.1 of 2021 in O.S.No.284 of 2008.



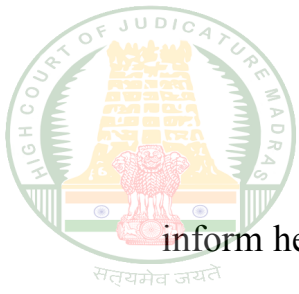
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2. The petitioner is the first defendant in the suit filed by the respondent/plaintiff before the Subordinate Court, Rasipuram, in O.S.No.284 of 2008 seeking for declaration, permanent injunction and other reliefs. In the said suit, the petitioner/1st defendant had entered appearance through his counsel, however, he was set *ex-parte* for non filing of written statement and the trial Court had passed an *ex parte* decree on 18.03.2010. Thereafter, the petitioner/1st defendant has filed an application in I.A.No.1 of 2021 under Section 5 of the Limitation Act to condone the delay of 3741 days in filing the petition to set aside the *ex-parte* decree dated 18.03.2010. The trial Court, holding that the delay of more than 10 years cannot be taken lightly, has dismissed the application vide order dated 13.12.2024. Challenging the same, the present civil revision petition has been filed.

3. The submissions of the learned counsel for the petitioner are as follows :-

3.1. The respondent/plaintiff had filed a suit in O.S.No.284 of 2008 before the Subordinate Court, Rasipuram, in which, the petitioner is the 1st defendant. The petitioner is a rustic lady, who hails from the village and she was expecting that her counsel would call her, however, since her counsel did not



inform her anything about the filing of the written statement, she was unable to file

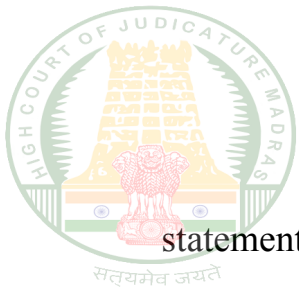
the written statement and not appeared before the trial Court, thereby, an ex parte decree came to be passed.

3.2. The petitioner's husband was sick and bed ridden for about five years and died on 26.01.2011, due to which, she was unable to follow the proceedings of the case properly.

3.3. Thereafter, on coming to know about the ex parte decree, the petitioner has filed an application in I.A.No.1 of 2021 under Section 5 of the Limitation Act to condone the delay of 3741 days in filing the petition to set aside the *ex-parte* decree dated 18.03.2010, whereas, the trial Judge failed to take into consideration the reasons stated by the petitioner and dismissed the application vide order 13.12.2024. If the petitioner is not given a chance, she will lose her property, thereby, she seeks to set aside the same.

4. The learned counsel appearing for the respondent has filed a counter before this Court and his submissions are as follows :-

4.1. The respondent is none other than the daughter of the petitioner's brother. In the suit filed by the respondent, inspite of several opportunities being given to the defendants for filing written statement, they have not filed the written



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statements, thereby, they were set ex parte and a preliminary decree came to be

passed on 18.03.2010.

4.2. Even in the final decree proceedings, the summons were duly served on the defendants, however, the defendants did not appear before the Court. Thereafter, an Advocate Commissioner was appointed and the petitioner was also allotted $\frac{1}{4}$ portion of the property. Further, based on the Report filed by the Advocate Commissioner, final decree came to be passed on 11.12.2018.

4.3. The petitioner had come up with the condone delay petition only after the respondent has filed an execution petition. The second defendant, who was contesting the suit, is none other than the son of the petitioner and they were living under the same roof and the petitioner had willfully failed to contest the suit. Further, the petitioner has not shown any sufficient cause to condone the delay of 3741 days, thereby, the trial Court had rightly dismissed the application. Hence, he prayed for dismissal of this revision petition.

5. Heard both sides and perused the materials available on record.

6. On perusal of record, it is seen that an ex parte decree came to be passed by the trial Court in the suit filed by the respondent/plaintiff on 18.03.2010,

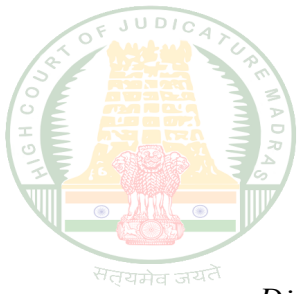


thereby, the petitioner has filed an application to condone delay of 3741 days in filing the set aside petition. The trial Court, holding that since the condone delay petition has been filed with a significant delay of 10 years with the sole intention to prevent the respondent from obtaining the benefit of the decree, the relief sought by the petitioner in this court is not available to her, had dismissed the petition seeking to condone the delay.

7. It is relevant to refer to the decision rendered by the Hon'ble Apex Court in ***Union of India and Another vs Jahangir Byramji Jeejeebhoy (d) through his LR*** reported in ***2024 SCC Online 489***, wherein, the Hon'ble Apex Court has held as,

“ 35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.”

8. Further, in the case of ***H.Guruswamy and Ors vs A.Krishnaiah Since deceased by Lrs (Civil Appeal No.317 of 2025) (Special Leave to Appeal (C) No.9719/2020 dated 08.01.2025***, the Apex Court has held as follows:



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“ 13. Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial conscience and 9 restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the respondents herein, it appears that they want to fix their own period of limitation for the purpose of instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the 10 opposition of the other side is equally balanced that the court may



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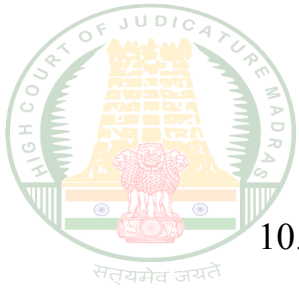
bring into aid the merits of the matter for the purpose of condoning the delay.

17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time.'.

9. Section 5 of the Limitation Act is clear that only in the event of the petitioner satisfying the Court that he had shown sufficient cause for not preferring the appeal or making the application within such period, the Court shall admit the petition. Section 5 of Limitation Act is extracted for ready reference:-

“5. Extension of prescribed period in certain cases. -
Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation.-The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.”



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10. In view of the above, this Court is of the opinion that the trial Court had rightly dismissed the application. Further, this Court does not find any illegality or infirmity in the order passed by the learned trial Judge. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

11.03.2025

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

1. The Subordinate Judge, Rasipuram.
2. The Section Officer,
VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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