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CRP. No.2086 of 2023



IN THE HIGH Court OF JUDICATURE AT MADRAS

Reserved on:25.09.2025

Pronounced on:10.10.2025

CORAM

THE Hon'ble MR.JUSTICE P.B.BALAJI

CRP. No.2086 of 2023

Commissioner,
Udumalpet Municipality,
Udumalpet.

Petitioner

Vs

Udumalpet Recreation Club,
by its Secretary,
Mr.C.Chidambarasamy.

Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 19.10.2022 of the learned Subordinate Judge, Udumalpet passed in I.A. No.457 of 2017 in O.S. No.111 of 2013.

For Petitioner : Mr.A.S.Thambuswamy
Mr.B.Anand

For Respondent : Mrs.AL.Gandhimathi,
Senior Counsel for
Mr.L.Palanimuthu

ORDER

The third defendant, challenging the order of dismissal of the Section 5 Application, which was filed for condonation of delay of 1030



days in taking out the Application for setting aside the exparte decree, is the revision petitioner.

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2. I have heard Mr.S.Thambuswamy and Mr.B.Anand, learned counsel for the revision petitioner and Mrs.AL.Gandhimathi, learned Senior Counsel for Mr.L.Palanimuthu, learned counsel for the respondent.

3. The learned counsel for the petitioner, Mr.Thambuswamy, would state that the plaintiff had filed the suit in O.S.No.111 of 2013 to declare his title by way of adverse possession and for mandatory injunction regarding approval of his building plan. According to the learned counsel for the petitioner, upon receiving summons in the said suit, the Commissioner, Udumalpet Municipality, the third defendant had entrusted the matter to the Standing Counsel appearing for the Municipality and even a vakalatnama had been given. However, the Standing Counsel went abroad and did not care to represent the matter, which resulted in an exparte decree being passed. He would therefore state that the petitioner was in dark about the proceedings and was under the impression that the Standing Counsel was taking care of the matter. However, only when the issue regarding approval of the building plan in pursuance of decree was brought to the notice of the petitioner, the petitioner came to know about the exparte decree and immediately, they



have taken out an Application to set aside the exparte decree, along with an Application seeking condonation of delay of 1030 days.

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4. The learned counsel for the petitioner, Mr.Thambuswamy, would further state that the Standing Counsel who was entrusted with the matter was even examined as R.W.2 and referring to his evidence, he would contend that the evidence of the said Advocate is wholly untrustworthy and cannot be relied on. He would therefore state that the valuable property of the municipality being at stake, a fair opportunity may be given to the petitioner to contest the suit on merits. He would also state that the third defendant would co-operate for expeditious disposal of the suit on merits.

5. Per contra, Mrs.AL.Gandhimathi, learned Senior Counsel for the respondent would submit that the only case on which the petitioner sought to condone the huge delay of 1030 days in filing the application to set aside the exparte decree was that the summons had been entrusted along with vakalatnama to the Standing Counsel, who subsequently, went abroad and did not defend the petitioner before the Trial Court.

6. The learned Senior Counsel would further state that it was the respondent who took efforts to examine the said Standing Counsel and referring to the evidence of the Standing Counsel, Mrs.AL.Gandhimathi,



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learned Senior Counsel would state that the Standing Counsel has clearly stated that he never went abroad and that he was never entrusted with the vakalatnama for the matter and only when the third defendant approached him to set aside the exparte decree, he required a parawise remarks, so that the written statement could be filed. She would therefore state that the petitioner's case for condonation of delay has been falsified by evidence of the R.W.2 and there was no error committed by the Trial Court in dismissing the Application and prays for the revision petition being dismissed.

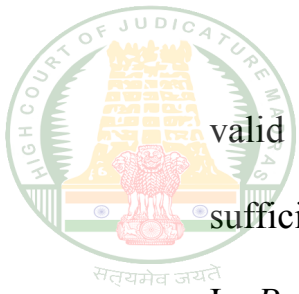
7. I have carefully considered the submissions advanced by the learned counsel for the petitioner and the learned Senior Counsel for the respondent.

8. Strangely, the petitioner has not chosen to examine the Standing Counsel who according to the petitioner was entrusted with the matter after service of summons. It is also the contention of the petitioner that vakalatnama was also given to enable the Standing Counsel to enter appearance in the said suit and there is also document to evidence the same. However, the said document has not been exhibited before the Trial Court and despite the Advocate himself being examined as R.W.2, the petitioner ought to have atleast examined the said witness viz., Standing



Counsel in cross examination and elicited all these details regarding the claim of the petitioner that vakalatnama along with suit summons was entrusted and that the petitioner was not in the country during the relevant period of time. The petitioner had ample opportunities to bring to light the facts claimed by the petitioners, by cross examining R.W.2. However, there has been no effective examination of the Standing Counsel on the side of the petitioner. The evidence as it stands is that the petitioner never went abroad and that he was never entrusted with vakalatnama in respect of the present suit. Therefore, the Trial Court has rightly appreciated the evidence on record and proceeded to dismiss the application, finding that there is no sufficient cause shown by the petitioner for condoning the inordinate delay of 1030 days.

9. As regards Mr.Thambuswamy's contention that the property belongs to the Municipality and by getting a decree based on adverse possession, the plaintiff should not be allowed to snatch the valuable property of the State, I am unable to countenance the said submissions. The Hon'ble Supreme Court has time and again held that in dealing with a Section 5 application under the Limitation Act, 1963, the Court will have to first find out if the applicant has shown sufficient cause. Only if the applicant shows sufficient cause, then alone, there is even a possibility of looking at the merits of the suit claim and even if the petitioner has a



valid or very good defence in the suit, if the petitioner fails to show sufficient cause, then the petitioner is not entitled to condonation of delay.

In *Pathapati Subba Reddy (Died) by Legal Representatives and others Vs. Special Deputy Collector (LA)* reported in, (2024) 12 SCC 336, the Apex Court held that Court can exercise discretion to condone delay only if sufficient cause is explained/shown and when there is inordinate delay, negligence and want of due diligence, then “sufficient cause” is not made out.

10. In fact, recently, the Hon’ble Supreme Court in *Shivamma (Dead) by LRS Vs. Karnataka Housing Board and Others*, reported in 2025 INSC 1104, reiterated the position that limitation is not merely a technical consideration, but based on principles of sound public policy and equity and the 'Sword of Damocles' cannot be kept hanging over the head of the respondent indefinitely, for a time to be determined at the whims and fancies of the applicant seeking condonation of delay.

11. The Hon'ble Supreme Court further held that length of delay is also a relevant matter which the Court must take into consideration while dealing with an Application for condonation of delay and administrative lethargy and laxity can never be sufficient ground for condonation of delay unless, the State-machinery establishes that it acted with bonafides



and remained vigilant all throughout.

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12. The reasons given by the petitioner in the affidavit for condonation of delay have been disproved by evidence of R.W.2. Despite having an opportunity to confront R.W.2 regarding the documents entrusted to him, it has not been elicited. R.W.2 has not even been called upon to produce his passport, which would have clearly proved the claim regarding the Standing Counsel having gone abroad. In any event, the Municipality which now claims that their valuable property has been snatched away by the respondent, under the guise of exparte decree, should have shown such seriousness in following up the matter. I had an occasion in *Chitravel and another Vs. Jothimani*, reported in 2024 (2) CTC 197, where I held as follows:

“13. Coming to the reason cited by the respondent in his application for condonation of delay of close to 5 years, they are that the trial Court Advocate did not inform him about the passing of the decree. Clearly, the respondent has played a blame game, accusing his trial Court Advocate of not informing him about the proceedings, especially, the factum of the suit being dismissed, after trial. As already referred herein above, this Court has consistently held that the negligence of the Advocate cannot be held to be a sufficient or just cause to entertain a condonation of delay application, as equally a duty is cast on the litigant, who is supposed to diligently follow up his case or her case with the lawyer. One another alarming factor is that such affidavits accusing lawyers is sadly gaining popularity. It is not a healthy trend. Behind the back of the lawyer who conducted the case, allegations are made in the affidavit, by engaging another counsel and citing the said reason that the Advocate or the Advocate's clerk did not inform the party, applications are being routinely filed before the court, seeking condonation of delay. Only in



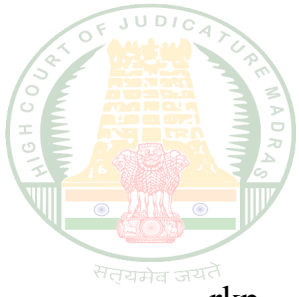
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order to assess the bonafides or truth in the averments and allegations made in this regard, the Courts are constrained put riders on such applications by insisting of production of any complaint made by the litigant against the Advocate before the Bar Council. Practically, it is understandable that in all cases it may not be possible for the litigant to approach the Bar Council and file complaint against the Advocate for various reasons. Even lawyers, who are engaged subsequently, would be embarrassed to take such action. However, the applicant casually blames the counsel who conducted the trial, especially behind the Counsel's back and gets a favourable order from the Court, condoning huge and inordinate delay. It is one thing to state that no prejudice would be caused to the petitioners if the delay is condoned and the appeal is heard on merits. When such a reason is thrust before the Court, it virtually goes unchallenged as the opposite party is not privy to the advocate-client relationship of the applicant. However, when the applicant is unable to show any just or sufficient cause and the only reason cited for the delay of approximately 5 years is blaming his advocate, then the Court should not entertain such an application."

13. The present case is also one where the petitioner accuses the Counsel entrusted with the brief and was not successful in establishing its version, despite having an opportunity to cross examine their Counsel. In any event, there is nothing stated as to why the petitioner did not exercise due diligence in following with the matter. After all, it is the litigant who is required to ensure that his case is duly prosecuted/defended and cannot choose to sit back and relax and claim that papers have been entrusted to the Advocate to be taken care of. Therefore, the petitioner has not been able to show sufficient cause and rightly the Trial Court has dismissed the Section 5 Application.

14. In view of the above, I do not find any merits in this revision and accordingly, this Civil Revision Petition is dismissed. No costs.



CRP. No.2086 of 2023



10.10.2025

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Index : Yes / No

Internet : Yes / No

To:

The Subordinate Judge, Udumalpet.

P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.2086 of 2023



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CRP. No.2086 of 2023



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