

**A.No.5074 of 2025****in****CS.No.524 of 2018****WEB COPY****MASTER****08.12.2025****ORDER**

1.This application has been taken to condone the delay of 688 days in representing the application in A.D.No.81495 and 81496 of 2023 in CS.No.524 of 2018.

2. The history behind this application is that the applicant in this application is the 5th defendant in the suit. The applicant/5th defendant and 4th defendant were set exparte on 06.01.2021 and an exparte decree and Judgment was passed against them on 19.03.2021. The applicant took an application to set aside the decree along with delay condone application to condone the delay of 799 days in filing the set aside application and an application to set aside the exparte decree and Judgment dated 19.03.2021. The same were returned and now it is represented along with this application to condone the delay of 688 days in representation.

3. The reason stated for the delay in representation is that due to non-apperance of the applicant's earlier counsel and lack of any communication regarding his suit from the earlier counsel. It is alleged that the above suit was filed to declare the sale deed dated 18.11.2015 and the sale deed in favour of the applicant dated 19.08.2016 bearing Document No.931 of 2016 as null and void and illegal, in which the applicant engaged a counsel who had filed his vakalat and subsequently, during early 2020 Covid-19



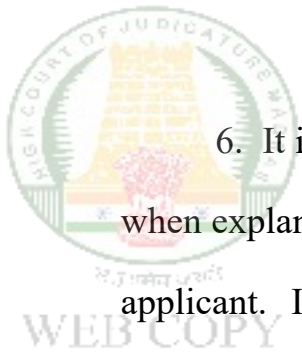
restriction which resulted in lack of communication, especially personal visit to advocate's office. In these circumstances, the applicant/5th defendant and 4th defendant were set exparte on 06.01.2021 due to non-appearance and lack of communication regarding the suit by their advocate. The applicant further stated that during April 2023 when he contacted his counsel to know the status of the suit he came to know about the exparte decree and immediately requested his counsel to take steps to restore the suit, though an affidavit was prepared in the first week of June 2023, it was filed after a period of 25 days on 26.06.2023. It is alleged by the applicant that despite asking his counsel about the restoration application, he didn't get any answer for the past 1 ½ years and finally he came to know that the said restoration application in S.R stage was returned on 11.07.2023 for certain compliance and to be represented on or before 11.08.2023 but his advocate failed to inform him about the same. Thus, there was a delay of 688 days in re-presenting A.D.No.81495 and 81496 of 2023.

4. The matter of condone delay in representation is between the litigant who files the application and the Court. Despite the said fact when the application was posted for hearing on 29.10.2025 the counsel for the first and second respondent who are plaintiffs in the above suit appeared before this Court and sought time for filing counter as the number of days of delay in representation is enormous. The respondents 1 and 2 filed their counter affidavit contenting that the applicant / 5th defendant has failed to be diligent not once in the above suit but on multiple occasions and is casually shifting the burden on the counsel. It is further contented that the applicant / 5th defendant ought to have filed an application to set aside the exparte order dated 06.01.2021 within a period of 30 days from the said date i.e. 06.01.2021 and similarly he ought to have filed an

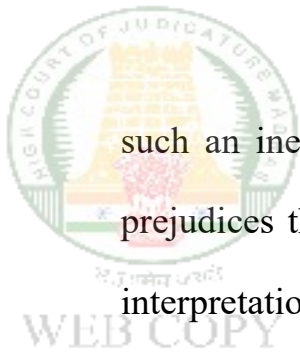


application to set aside the exparte Judgment and Decree dated 19.03.2021 within a period of 30 days from the said date i.e. 19.03.2021 but however, the applicant / 5th defendant filed an application after delay of about 2 ½ years on 26.06.2023 and once again failed to diligently prosecute the same. The learned counsel for the respondents 1 and 2 also vehemently objected that the applicant cannot shift the entire blame on his counsel due to the latin maxim “*Vigilantibus Non Dormientibus Jura Subveniunt*” and the applicant / 5th defendant has left over his rights for almost 4 years and has come up with this application with no satisfactory reasons to condone the delay in representing the restoration application filed along with condone delay. The Court can only help to the litigants who are vigilant and not those who sleep over their rights.

5. In support of his contention the learned counsel for the respondents 1 and 2 relied upon the decision in Rajneesh Kumar and Another –Vs– Ved Prakash 2024 SCC Online SC 3380 wherein it is held “10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioner's in the Trial Court. We have noticed over 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 a 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.



6. It is well settled law that the discretion to condone delay is to be exercised only when explanation is reasonable, bonafide and not indicative of negligence on the part of applicant. In the present case, the applicant has not produced any oral or documentary evidence to show that he followed up with the erstwhile counsel. Similarly, no correspondence, no affidavit from the previous counsel and no records are filed to substantiate the allegation made against the previous counsel. It is seen from the records that the applications in A.D.No.81495 and 81496 of 2023 were filed on 26.06.2023 and the same were returned on 11.07.2023 with a time limit of 30 days to represent the same and on perusal of the affidavit filed by the applicant / 5th defendant himself it is seen that he has remained quiet for 1 ½ years after filing of the applications and no satisfactory reason given by the applicant as to why he remained quiet for 1 ½ years. The applicant's act of remaining completely inactive for nearly 1 ½ years without representing the applications in A.D.Nos.81495 and 81496 of 2023, offering only a vague and bald allegation of counsel's negligence is wholly unsatisfactory and not convincing, that too in this case where already the applicant has filed A.D.No.81495 of 2023 to condone the delay of 799 days in filing the application to set aside the exparte Judgment and decree dated 19.03.2021. As rightly pointed out, by the learned counsel for the respondents 1 and 2 the litigant cannot take shelter behind the alleged fault of the counsel without himself exhibiting due diligence. Vague allegations against the advocate, unsupported by material, cannot constitute sufficient cause. From the averments made out in the affidavit filed by the applicant in support of the applications, it is clear that the applicant is not following his case properly from the beginning itself. In view of the above discussion, this Court is of opinion that the Court cannot condone



such an inexplicable and prolonged delay which defeats the finality of litigation and prejudices the rights of the plaintiff who had obtained a decree in his favour. Liberal interpretation of “sufficient cause” cannot be extended to cases of utter negligence and total indifference as seen from the affidavit filed by the applicant himself, wherein already he has filed A.D.No.81495 of 2023 which is to condone of 799 days in filing the set aside application to set aside the exparte decree dated 19.03.2021.

7. Applying the principles laid down in *Rajneesh Kumar and Another –Vs-- Ved Prakash* cited supra, this court finds no sufficient cause to condone the delay in representation.

In fine, this application is dismissed. No cost.

MASTER