



C.R.P.No.609 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09..07..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P. No.609 of 2018

1. Marayee
2. Sundaram

..... Petitioners

-Versus-

1. Ponnammal (Died)
2. Chinna Ponnu @ Ramasamy
3. Natarajan
4. Lakshmi @ Kaliyammal
5. Kalaiselvi
6. Saroja
7. Kannagi

[Respondents 5 to 7 are brought on record as legal representatives of the deceased 1st respondent – Ponnammal by order dated 02.07.2025 made in C.M.P.Nos.11726, 11728 & 11729 of 2022 in C.R.P.NO.609 of 2018]

..... Respondents

Petition filed under Section 115 of CPC praying to set aside the order and decretal order dated 08.01.2025 made in I.A.No.39 of 2015 in unnumbered A.S.No..... of 2015 by the Principal District Judge, Namakkal, Namakkal District.

For Petitioner : Mr.P.Rathanavel

For Respondent : Mr.B.V.Giridharan for R5

Mr.S.T.Bharath Gowtham for R6

R2 – Dismissed vide court order dated 10.02.2023

No appearance for RR3, 4 & 7

R1 – Died



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ORDER

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This Civil Revision Petition has been filed challenging the order passed by the learned Principal District Judge, whereby the application filed under Order XLI Rule 3A of the Code of Civil Procedure and Section 5 of the Limitation Act, seeking condonation of a delay of 189 days in presenting the appeal suit against the judgement and decree dated 07.03.2014, was dismissed.

2. The revision petitioners are the appellants in the unnumbered appeal suit and were arrayed as defendants 1 and 5 in the original suit. The first respondent is the first respondent in the unnumbered appeal suit and was the plaintiff in the suit. Respondents 2 to 4 in this revision petition are also respondents 2 to 4 in the unnumbered appeal suit and were defendants 2 to 4 in the suit.

3. The suit was filed for a judgment and decree declaring that the sale deed dated 23.09.2010, executed by the first defendant in favour of the fifth defendant, including the plaintiff's 1/6th share in the first item of the suit property, is legally invalid, null, and void. The suit also sought partition and separate possession of suit item Nos. 1 and 2 into six equal shares and allotment of one such share to the plaintiff. The suit was decreed on 07.03.2014. Aggrieved by the said decree, defendants 1 and 2 preferred an



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appeal along with an application to condone the delay in filing the same. The appellate court dismissed the condone delay application.

4. The petitioner contended that the suit was decreed on 07.03.2014 and that she had applied for certified copies of the judgment and decree. She was informed by her counsel that she would be notified once the copies were ready. However, due to illness, she was unable to contact her counsel. After her recovery, she became aware that there was a delay of 189 days in filing the appeal.

5. The first respondent opposed the condone delay petition, stating that the petitioner had failed to specify the period of illness or submit any supporting documents. The suit, filed in 2011, was decreed on 07.03.2014 after a full trial. In the final decree proceedings, notices were served on 23.03.2015 to the first petitioner and on 21.03.2015 to petitioners 2 to 4. However, none appeared, leading to an ex parte order. Further, REP No.13/2015 was filed for cost recovery, and notices were duly served. The respondent argued that the illness claim was vague and unsubstantiated, and that the delay petition was merely an attempt to obstruct execution and defeat the decree-holder's rights.

6. Upon perusal of the records and considering the overall conduct of the



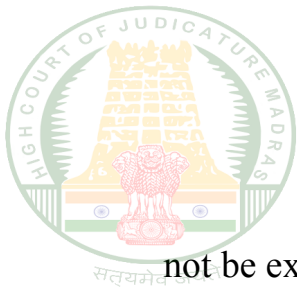
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petitioners, the appellate court found that the petitioners had not shown sufficient cause for the inordinate delay of 189 days and therefore dismissed the delay condonation petition. Hence, this revision petition.

7. Heard both sides.

8. The right of appeal is a substantive and valuable legal remedy, forming an integral part of the adjudicatory process. Courts must remain cautious not to defeat such rights on mere technical grounds, particularly where refusal to condone delay may result in miscarriage of justice. Though the explanation offered by the petitioner for the delay is not entirely satisfactory or supported by medical documentation, it cannot be said to be wholly devoid of merit. Given the circumstances and the absence of any indication of mala fide intention or deliberate inaction, this Court is of the view that a reasonable cause has been made out. In furtherance of the principles of substantial justice, it would be just and appropriate to afford the petitioners an opportunity to pursue the appeal on merits.

9. In ***Pathapati Subba Reddy (Died) by L.Rs. and Others v. Special Deputy Collector (LA)***, [2024 SCC OnLine SC 513], the Hon'ble Supreme Court reiterated that while a liberal and justice-oriented approach may be taken in condoning delay under Section 5 of the Limitation Act, such discretion must



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not be exercised mechanically or to revive stale claims without sufficient cause.

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The Court emphasized that terms such as “liberal approach,” “justice-oriented approach,” and “cause of substantial justice” cannot be employed in a manner that undermines the law of limitation, which confers substantive rights upon the parties and promotes legal certainty and finality.

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In *Collector, Land Acquisition, Anantnag v. Katiji*, [(1987) 2 SCC 107 : AIR 1987 SC 1353], this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of ‘sufficient cause’ for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases ‘liberal approach’, ‘justice-oriented approach’ and cause for the advancement of ‘substantial justice’ cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened



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by taking aid of Section 5 of the Limitation Act.”

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26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that: (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself; (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time; (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally; (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act; (v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence; (vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal; (vii) Merits of the case are not required to be considered in condoning the delay; and (viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to



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disregarding the statutory provision.”

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10. In this case, while the delay of 189 days in filing the appeal is not minor, the Court is satisfied that the petitioners have given a reasonable explanation, though not very strong, for the delay. Taking into account the settled principles of law, the overall factual matrix, and the need to advance substantial justice, this court finds it appropriate to adopt a pragmatic and equitable approach. A refusal to condone the delay, in the peculiar circumstances of this case, would effectively foreclose the petitioners’ right to contest the decree on merits, which may result in irreparable prejudice.

11. Accordingly, this Court is of the considered view that the delay of 189 days in filing the appeal merits condonation, in order to afford the petitioners a fair opportunity to contest the matter on merits. Such indulgence, in the interests of justice, would better serve the cause of a full and effective adjudication of the parties’ rights.

In the result, the Civil Revision Petition is allowed. The impugned order passed by the learned Principal District Judge is set aside. The delay condonation application is allowed. The learned Principal District Judge is directed to number the appeal suit, if the papers are otherwise in order, and to dispose of the appeal suit on merits and in accordance with law, within a period



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of four months from the date of receipt of a copy of this order. No costs.

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Index : yes / no
Neutral Citation : yes / no
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To

1.The Principal District Judge, Namakkal, Namakkal District.



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N.SATHISH KUMAR.J.,

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