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CRP No. 3571 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2025

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No. 3571 of 2025

1. A.Muthuswamy

2. M.Gokila

Petitioner(s)

Vs

Murugesan

Respondent(s)

For Petitioner(s): Mr. T.V. Sai Srujan

ORDER

Challenging the order of the trial Court dismissing the application filed by the petitioner to condone the delay of 4131 days in filing an application to set aside the *ex parte* decree, the present revision petition has been filed.

2.The suit has been originally filed by the respondent for recovery of money based on a promissory note executed by the petitioners. In the said suit,



the petitioner/defendant was set *ex parte* and an *ex parte* decree came to be passed on 03.08.2010. Thereafter, E.P. Proceedings were initiated and auction was also conducted and the petitioner has come forward with the present application to condone the delay of 4131 days in filing an application to set aside the *ex parte* decree.

3. It is the contention of the petitioners that though they engaged a lawyer in the suit, he did not inform the progress of the case and hence, *ex parte* decree came to be passed. Only after verification of the encumbrance certificate, they came to know about the *ex parte* decree and filed an application to condone the delay of 4131 days. Hence, the delay and the same is neither wilful nor wanton.

4. That application has been opposed by the respondent on the ground that though the petitioners have appeared through counsel on 21.04.2011 in the execution court and failed to appear on further hearing dates. sufficient cause has not been shown to condone the huge delay. The trial Court, taking note of the fact that the delay has not been properly explained and no sufficient cause



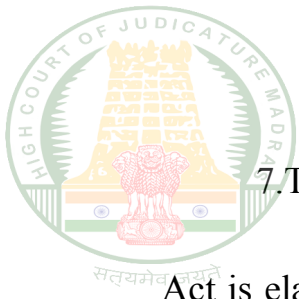
has been shown, dismissed the application by order dated 19.04.2023.

Challenging the same, the present revision has been filed.

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5. I have heard the learned counsel for the petitioner and perused the materials available on records carefully.

6. The reason assigned for delay in the affidavit is that they were not aware of the *ex parte* decree passed against him and only after verifying the encumbrance certificate, they came to know about the *ex parte* decree and the auction sale. The very reason assigned in the affidavit filed along with application to condone such a huge delay is nothing but a false statement. The contention of the petitioners cannot be countenanced for the simple reason that even after receipt of the notice in E.P.No.28 of 2011, and appeared through counsel on 21.04.2011, they failed to file an application to set aside the *ex parte* decree immediately and filed the application to condone the delay after 10 years. Hence, their contention that they were not aware of the proceedings cannot be accepted.

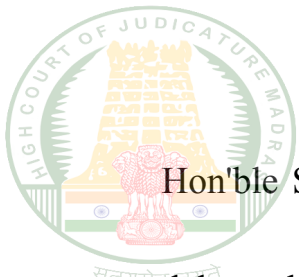


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7. Though the word “sufficient cause” under Section 5 of the Limitation Act is elastic enough to enable the Court to apply law in a meaningful manner to subserve the ends of justice, the fact remains that, to enlarge such discretion to the parties to advance substantial justice, the reasons assigned by the parties should be true and justifiable and there must be sufficient cause.

8. In *Basawaraj and another v. Special Land Acquisition Officer [2013*

(4) SCC 81], the Apex Court has held that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of *bona fides* is attributed to the party. It is further observed therein that, even though limitation may harshly affect the rights of a party, it has to be applied with all its rigour when prescribed by statute and in case a party has acted with negligence, lack of *bona fides* or there is inaction, then there cannot be any justified ground for condoning the delay even by imposing conditions. It is further observed that each application for condonation of delay has to be decided within the framework laid down by the

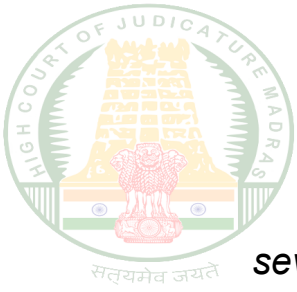


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Hon'ble Supreme Court. It is further observed that, if Courts start condoning delay where no sufficient cause is made out imposing conditions, then that would amount to violation of statutory principles and showing utter disregard to legislature. The said judgment has also been followed by the Hon'ble Supreme Court in *Majji Sannemma @ Sanyasirao v. Reddy Sridevi and others [Civil Appeal No.7696 of 2021, dated 16.12.2021]*.

9.Further, the Hon'ble Supreme Court in *Thirunagalingam v. Lingeswaran and another [Unnumbered Civil Appeal arising out of SLP (C) No.17575 of 2023, dated 13.05.2025]*, has held as follows :

***“31.It is a well-settled law that while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.*”**



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32.*Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.*

33.*Therefore, in the case at hand, once it has been established that the reasons provided for condoning the delay in the application filed are not sufficient, we are not inclined to go into the merits of the contentions raised by the learned counsel of Respondents regarding Section 14 of the Limitation Act, 1963.”*

10. Therefore, without assigning *bona fide* and justifiable reasons, as a matter of right, the petitioners cannot seek indulgence of this Court for his negligence in not prosecuting the matter. Having allowed the suit to be decreed *ex parte*, the petitioners have waken up from a deep slumber for more than ten years, and now seeks to unsettle the settled issues.



11. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration, as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to the lackadaisical attitude should be curbed at the initial stage itself. The petitioners were well aware of the case and admittedly, they have been appeared before the Execution Court. Whereas, they have given a casual explanation. Such a reason, in the view of this Court, is invented only for the purpose of filing the present application. Therefore, it is very clear that the petitioners have shown their negligent attitude towards the litigation, though aware of the consequences of the judicial proceedings.

12. Once the delay has not been explained to the satisfaction of the Court, as a matter of right, the petitioners cannot seek to condone their negligence.



Even for the Court to extend its discretion to lien in favour of a party, he/she

should assign *bona fide*, justifiable and probable reasons. The parties who seek

such a relief must show sufficient cause. The petitioners have not shown any

sufficient cause to condone such a huge delay. Hence, this Court is of the view

that the order of the trial Court dismissing the application, requires no

interference.

13. Accordingly, this Civil Revision Petition is dismissed. No costs.

06-08-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

mrp

To

The Principal District Munsif Court, Tiruppur.



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