



C.M.P.No.11695 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2025

CORAM
THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

C.M.P.No.11695 of 2025
in
A.S.SR.No.139850 of 2023

S. Rajendiran (Deceased)

1. S. Mani

2.S.Ramesh

3.Geetha

.. Petitioners

/Versus/

Dhanalakshmi Ammal

.. Respondent

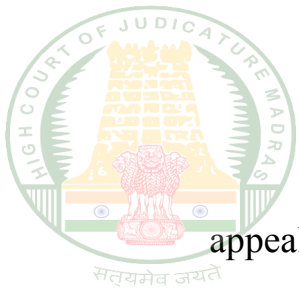
PRAYER: Civil Miscellaneous Petition filed under Order XLI Rule 1 read with Section 96 of C.P.C., pleaded to condone the delay of 139 days in filing the above Appeal against the Judgement and Decree in O.S. No.2 of 2018 on the file of the learned I Additional District and Sessions Judge, Vellore.

For Petitioners : Mr.C.S.Kiran

For Respondent : Mr.Avinash Wadhwani

ORDER

The petition to condone the delay of 139 days in preferring an



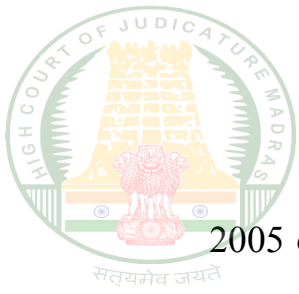
C.M.P.No.11695 of 2025

appeal against the judgment and decree passed by the Court below in
O.S.No.2 of 2018, directing delivery of vacant possession to the plaintiff.

2. The defendants, aggrieved by the said judgment and decree, has preferred an appeal with delay.

3. According to the petitioners/appellants, the delay was due to the illness of the 1st appellant, who in fact, died on the very day the appeal was filed. The petition is contested by the respondent, who contends that though the delay in filing the appeal is stated to be only 139 days, even after such delayed filing, the appellants failed to be vigilant when the papers were returned for defects and were represented only after a further delay of 519 days. Meanwhile, the respondent had filed an Execution Petition and took possession of the property. The matter was adjourned for recording the delivery.

4. It is submitted that the petitioners, being in possession of the property without any right, were also sought to be evicted through rent control proceedings and thereafter, the present suit was filed following the disposal of the partition suit in O.S.No.273 of 1983 on the file of the Sub Court, Vellore, which was renumbered as O.S.No.385 of



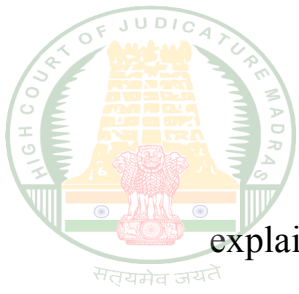
C.M.P.No.11695 of 2025

WEB COPY

2005 on the file of the District Munsif Court, Vellore. After a prolonged legal battle, the respondent has taken possession of the property at the age of 74 years. Any indulgence shown to the petitioners in condoning the delay would cause great prejudice and hardship to the respondent.

5. This Court, on perusing the affidavit and the counter, is convinced that the respondent, who had asserted her title by way of decree, been fighting for recovery of possession for a long time, finally succeeded by virtue of the judgment and decree passed in O.S.No.2 of 2018 dated 23.02.2023. She took possession of the property in E.P.No.79 of 2023. Though it is contended by the learned counsel for the petitioners that the suit is hopelessly barred by limitation, admittedly, the respondent has proved her title and right to possession of the property after pursuing her remedy initially by instituting R.C.O.P.No.18 of 1986.

6. In view of the fact that the petitioners had not shown due diligence in pursuing the appeal not only it has been preferred after delay of 139 days, but there was also an additional delay of 519 days in representing the papers after curing the defects. This Court is of the view that the delay of 139 days in filing the appeal has not been properly



C.M.P.No.11695 of 2025

explained. Though this Court had condoned the delay of 519 days in representation, that does not mean that the delay of 139 days in filing the appeal has also been condoned in the absence of adequate and sufficient cause.

7. Hence, this Civil Miscellaneous Petition to condone the delay is dismissed. Consequently, the Appeal Suit is also dismissed at the SR stage itself. There shall be no order as to costs.

07.07.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

rpl

To

The I Additional District and Sessions Judge, Vellore.



WEB COPY



C.M.P.No.11695 of 2025

G.JAYACHANDRAN, J.

rpl

C.M.P.No.11695 of 2025
in
A.S.SR.No.139850 of 2023



WEB COPY



C.M.P.No.11695 of 2025

07.07.2025