



WEB COPY



C.R.P.No.52 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

CORAM :

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.No.52 of 2025
and CMP.No.419 of 2025

1.D.V.Venkatesan
2.V.Manjula

... Petitioners

Versus

1.N.R.Subramanian
2.S.Venkatraman

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 16.12.2022 in I.A.No.835 of 2018 in O.S.No.42 of 2013 on the file of Principal District Judge, Kancheepuram District at Chengalpatu.

For Petitioner : Mr.V.Raghavachari, Senior Counsel
for M/s.Srimathi V
For Respondents : Mr.T.Mohan, Senior Counsel
for Mr.N.Umapathi for R1

ORDER

Challenging the order of the Trial Court dismissing the application
filed to condone the delay of 1158 days in setting aside the exparte decree



C.R.P.No.52 of 2025

dated 07.03.2015, the present revision has been filed.

WEB COPY

2. Brief background of the case is as follows:

2.a. The suit in O.S.No.42 of 2013 has been filed for relief of specific performance of agreement dated 10.05.2010. The said suit came to be decreed exparte on 07.03.2015. Therefore, the petitioners took up application to condone the delay of 1158 days in setting aside the exparte decree dated 07.03.2015. The reasons assigned by the revision petitioners before the Trial Court is that in the original suit, after receiving a notice in I.A.No.210 of 2013, they engaged lawyers namely Ms.Poorna Chandrika and Ms.Theresa. The petitioners were under bonafide belief that the above case has been pursued and taken care by their advocate. However, to their gross dismay, they came to know the fact of exparte decree only upon service of notice in E.P.No.35/2016. They came to know that the suit was decreed exparte on 07.03.2015, they have duly entered appearance in the said Execution Petition on 23.03.2016 immediately and undertook steps to obtain certified copies of the relevant documents in the above suit, in order



to prepare and contest the case. The copy application has been complied with only in the month of August last week of 2016. Thereafter, they took steps to enquire into the veracity of the documents since they had commercial dealings with the first respondent. Thereafter, they filed a petition to set aside the exparte decree dated 07.03.2015, but the papers were returned on 11.11.2016 which was not intimated to the petitioners, they were under the impression that petition to set aside the exparte order and condone delay petition has been numbered, however, the previous advocate has taken the returned papers and did not inform represent the paper. Therefore, there was a delay. According to them, default committed in non appearance in the suit is neither willful nor wanton, but occasioned due to aforesaid reasons, which is beyond their control.

2.b. The respondents filed their counter objecting the petition on the ground that on receipt of summons in the suit, the petitioners appeared through their lawyer on 10.06.2013 and engaged separate advocates and took 11 adjournments for filing written statement in a span of 18 months.



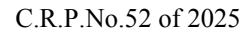
However, written statement has not been filed. The plaintiff filed an application in I.A.No.953 of 2014 for amendment of plaint, wherein, notice was ordered to the petitioners, despite service of notice, they remained exparte on 09.02.2015. Then, the suit was posted for exparte evidence and the plaintiff has been examined as PW1 and the suit was decreed on 07.03.2015. Thereafter, the petitioners appeared in execution proceedings after 7 months. Hence, opposed the application. The Trial Court, after considering the nature of reasons assigned held that the delay was not explained properly and dismissed the application. Hence, this revision.

3. Mr.V.Raghavachari, the learned Senior Counsel for the revision petitioners vehemently contended as follows:

a. that agreement relied upon by the plaintiff/first respondent, who seek specific performance is a created one;

b. alleged payment of consideration paid in cash in also highly improbable.

c. exparte decree dated 07.03.2015 does not contain any reasons with regard to the readiness and willingness on the part of the plaintiff;



<https://www.mhc.tn.gov.in/judis>



5. Mr.T.Mohan, learned senior counsel for the first respondent submitted that the delay of each days have not been properly explained by the revision petitioners. When all attempts failed by the revision petitioners, the allegations are pressed into service as against the lawyers only for the purpose of setting aside the exparte decree. Notice in execution proceedings was served to the revision petitioners on 23.03.2016 itself, however the impugned application for setting aside the exparte decree has been filed only after two years of service of notice in the execution proceedings. It is his further contention that the second respondent had already filed obstruction petition in registering the sale which also came to be dismissed and sale deed is already executed. The very conduct of the parties blaming the lawyers without any substance indicate that the petitioners have not come to the Court with clean hands. Hence, seeks for dismissal of this revision.

6. In support of his submissions, he placed reliance on the following cases:



C.R.P.No.52 of 2025

a. In *Union Bank of India vs. K.R.Jewellers and others* reported in 2008 (5)

CTC 651, wherein, the Division Bench of this Court held that the allegations of negligence against counsel is not a ground to condone delay because the party has an equal responsibility to follow up the matter.

b. In *Somasundaram vs. Nataraj* reported in 2025 (1) *CTC* 129, this Court has held that delay should not be excused a matter of generosity and not to cause prejudice to other party, the Court should consider the reason for delay rather than duration of delay and discretion should be exercised judiciously based on facts and circumstances.

c. In *Chitravel and another vs. Jothimani* made in *CRP(MD).No.798 of 2019* dated 20.12.2023, wherein, a Single Bench of this Court held that when the applicant is unable to show any just or sufficient cause and the only reason cited for the delay is blaming the advocate, then the Court should not entertain such an application.



C.R.P.No.52 of 2025

d. In *F.Ramesh vs. M/s.Ramalingam Investments, Salem* represented by its Managing Partner *K.Sridharan* reported in 2013(5) MLJ 565, where, this Court held that the applicant seeking condonation of delay ought to have diligently prosecuted the case by contacting his counsel and even though a duty is cast upon the Advocate to represent his client, the contention of the revision petitioner that he was waiting for a call from his Advocate and since there was no response, he did not contact his Advocate and in the above said circumstances, the ex-parte decree came to be passed, cannot be accepted.

7. Heard both sides and perused the materials placed on record.

8. At the outset, it is to be noted that even filing of this revision, there was a delay of 382 days which has been condoned by this Court only in order to hear the matter on merits.



WEB COPY

9. No doubt every litigation has to be decided based on adjudication, but, at the same time, when the party was so negligent and lethargic and purposively allowed the matter to be decided exparte, neither taken any objection at earlier point of time nor filed any application in-time to prosecute the matter, coming with false allegations against the lawyers, such conduct and behavioral attitude of the parties cannot be brushed aside altogether. The very conduct of the parties play vital role in deciding the application.

10. It is relevant to note that though much emphasis has been made by the learned senior counsel about the substantive rights of the parties, according to him, the property of the revision petitioners is sought to be knocked, therefore, an opportunity should be given. It is relevant to note that if really, the intention of the parties is to protect the property, they ought to have pursued the suit properly. In fact, they entered appearance in the suit on 10.06.2013 and engaged two different lawyers namely Ms.Poorna Chandria and Ms.Terasa in the suit itself. They sought 11



adjournments in the suit in a span of 18 months for filing written statement.

As the written statement was not filed, they were set exparte. It is relevant to note that mere engaging the lawyer and entrusting the matter will not absolve the litigant from pursuing the matter diligently.

11. It is also pertinent to note that exparte decree has not been passed immediately after the petitioners were set exparte on 09.02.2015 for non filing of the written statement. In fact, the plaintiff has taken an application for amendment of the plaint in I.A.No.953 of 2014. In the said amendment application also, notice has been served to the petitioners. Even after receipt of notice, the petitioners have conveniently remained exparte. Thereafter, when the suit was posted for exparte evidence, PW1 was examined and the suit got decreed on 07.03.2015. Pursuant to the exparte decree, execution petition was filed in EP.No.35 of 2016, wherein, notice was served to the petitioners and they engaged other lawyer namely M/s.Kiruthika Devi who sought time to file counter. Counter was filed in EP.No.35 of 2016 on 07.10.2016. Thereafter, other counsel was engaged in the execution



C.R.P.No.52 of 2025

proceedings on 17.06.2017 and the impugned application was filed to condone the delay in filing application to set aside the exparte decree dated 07.03.2015.

12. The above makes it very clear that the petitioners almost engaged 4 lawyers in the matter, even after receipt of notice in execution proceedings, they have not filed the application to set aside the exparte decree immediately, whereas, the application has been filed after two years, i.e., after receipt of notice in execution proceedings. The conduct of the parties clearly indicate that the petitioners were so lethargic and purposively for some or other reasons, they were not prepared to defend the suit.

13. It has been consistently held by the Hon'ble Supreme Court that the delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The Hon'ble Supreme Court has also been consistently reiterating that the court must consider the reason for the delay rather than the duration of the delay.



The discretion to condone the delay has to be exercised judiciously based upon the facts and circumstances of each case. In *Ramlal vs. Rewa Coal Fields Ltds*, reported in *AIR 1962 SC 361*, the Hon'ble Supreme Court has held that once the period of limitation expires, then the applicant has to explain the delay made thereafter for day by day and if he is unable to explain the delay even for a single day delay, it would be deemed that the party did not have sufficient cause for delay.

14. No doubt, the Hon'ble Supreme Court as well as this Court have repeatedly held that the length of delay is immaterial, however, the applicant, who seeks condonation of delay, has to show sufficient or just cause. Such proof of sufficient or just cause is a pre-condition for entertaining the application for condonation of delay. The discretion to allow an application for condonation of delay is different from the satisfaction of the requirements of Section 5 of the Limitation Act. The discretion cannot be exercised by a Court when the applicant seeking condonation of delay is unable to satisfy the Court that he had just or



sufficient cause for not approaching the Court earlier and that the delay was occasioned beyond his control, there was no gross negligence or deliberate inaction or any lack of bonafides. If the petitioners are able to show and satisfy the Court, in the absence of the above militating factors, then they are entitled to discretion being exercised in his favour. However, in the case on hand, this Court is of the view that the petitioner has not shown sufficient cause to condone the huge delay. That apart, condoning the long delay in the absence of sufficient reason would cause prejudice to the other parties. Further, when the defence of limitation is raised by the parties, the Court cannot accept the application beyond the period of limitation.

15. It is also relevant to note that to substantiate the allegations against the lawyers, no scrap of paper or evidence has been adduced by the revision petitioners. Therefore, this Court is of the view that just changing the lawyers according to the whims and fancies of the parties only in order to file applications at later point of time and making allegations against the lawyers indicate that the very allegations were pressed into service only for the purpose of filing application. If really, agreement was not entered into



by the parties, some third parties had created agreement and trying to knock out their immovables properties, normal conduct of human being would be to protect their interests by reacting immediately in defending the proceedings, whereas, engaging different lawyers in different levels and not filing an application or defending the suit clearly indicate that their conduct and attitude go against them.

16. From the above, this Court can very well infer certain facts from the conduct of the parties. If really, the contention of the learned senior counsel that the entire document has been created and agreement has been forged, this Court is of the view that reaction of the parties must be immediate to proceed and defend the suit, whereas, in several stages, they are very lethargic. Having engaged lawyers in the suit, despite 11 adjournments granted by the Trial Court in filing the written statement, they failed to put forth their evidences. Even after receipt of the notice in execution proceedings, application has not been filed to set aside the exparte decree and has been filed only after two years. Not stopping with



C.R.P.No.52 of 2025

that, even in filing the present revision as against the dismissal order, there was a delay of 382 days. The conduct of the revision petitioners in view of this Court cannot be condoned under the pretext of substantive rights.

17. Left with no other choice, it appears that the entire blame has been thrown on the head of the advocates who were appearing for the revision petitioners in the trial court. Even if this Court 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 the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about the judicial proceedings. 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.

18. It is relevant to note that the Hon'ble Supreme Court in the case of *Salil Dutta vs T.M. & M.C. Private Ltd.*, reported in (1993) 2 SCC 186,



wherein, the Hon'ble Supreme Court has held as follows:

WEB COPY

“8. The advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. the party who engage him. It is true that in certain situations, the court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognized. Such an absolute rule would make the working of the system extremely difficult. The observations made in Rafiq [(1981) 2 SCC 788 : AIR 1982 1 SC 1400] must not be understood as an absolute proposition. As we have mentioned hereinabove, this was an on-going suit posted for final hearing after a lapse of seven years of its institution. It was not a second appeal filed by a villager residing away from the city, where the court is located. The defendant is also not a rustic ignorant villager but a private limited company with its head office at Calcutta itself and managed by educated businessmen who know where their interest lies. It is evident that when their applications were not deposed of before taking up the suit for final hearing they felt piqued and refused to appear before the court. May be, it was part of their delaying tactics as alleged by the plaintiff. May be not. But one thing is clear they chose to non-cooperate with the court. Having adopted such a stand towards the court, the defendant has no right to ask its indulgence. Putting the entire blame upon the advocate and trying to make it out as if they were totally unaware of the nature or significance of the proceedings is a theory which cannot be accepted and ought not to have been accepted.”

(Emphasis supplied)



19. The contention that the exparte judgment was not in consonance with the provisions under Order XX Rule 4 and 5 of CPC is concerned, on perusal of the exparte decree dated 07.03.2015 this Court is of the opinion that Trial Court had properly considered the oral and documentary evidences, prima facie satisfied itself and granted the decree dated 07.03.2015. The exparte decree constitute a judgment. This Court do not find any irregularity or illegality in the same. Thus, the argument advanced by the learned senior counsel in this regard is negated.

20. The object of the law of limitation is to compel the litigant to be diligent in seeking remedies in courts of law. In *S.C.Prashar vs. Vasantsen Dwarakadas* reported in *AIR 1963 SC 1356*, the Hon'ble Supreme Court has observed that the statute of limitation is a statute of repose, peace and justice. The intention of the law of limitation is not to give a right where there is not one, but to interpose a bar after certain period to a suit to impose an existing right.



21. It is well settled principle that the rules of limitation are not meant to destroy the rights of the parties. They are meant to bar the remedy for those who seek dilatory tactics to enforce their remedy within the period stipulated by the legislature. When the statute prescribes certain acts to be done in a proper manner within a particular time litigant cannot be so negligent despite having appeared in the Court and make bald allegations at later point of time. The rules of limitation thus will only bar the remedy but does not extinguish the right. Therefore, when the remedy is extinguished under the operation of law, the same cannot be re-opened at the later point of time.

22. It is apt to point out that the Hon'ble Supreme Court in the case of *Bharat Barrel & Drum MFG Co. vs. The Employees State Insurance Corporation* reported in 1971 2 SCC 860 has held as follows:

The necessity for enacting periods of limitation is to ensure that actions are commenced within a particular period, firstly to assure the availability of evidence documentary as well as oral to enable the defendant to contest the claim against him; secondly to give effect to the principle that law does not assist a person who is inactive and sleeps over his rights by allowing



WEB COPY



C.R.P.No.52 of 2025

them when challenged or disputed to remain dormant without asseting them in a court of law. The principle which forms the basis of this rule is expressed in the maximum vigilantibus, non dermientibus, jura subveniunt (the laws give help to those who are watchful and not to those who sleep). Therefore the object of the statutes of limitations is to compel a person to exercise his right of action within a reasonable time as also to discourage and suppress stale, fake or fraudulent claims"

Emphasis supplied

23. Considering the above legal aspects, conduct and attitude of the parties, I do not find any sufficient reasons to condone such huge delay. The very allegations pressed into service appears to have no truth on it. Hence, such reasons cannot be accepted by the Court of law, particularly, when those allegations are not substantiated in any manner either by oral or documentary evidences.

24. In view of the above, this revision fails and stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

31.01.2025

dhk

Neutral Citation : yes/no

N.SATHISH KUMAR, J.



WEB COPY



C.R.P.No.52 of 2025

dhk

To

The Principal District Judge
Principal District Court, Kancheepuram at Chengalpatu

C.R.P.No.52 of 2025

31.01.2025

20/20