



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.08.2025

Pronounced on:12.09.2025

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THE HONOURABLE MR.JUSTICE P.B.BALAJI**CRP. No.2863 of 2025**

1. M/s.Nanchil Infrastructure Private Limited,
Rep. by its Director, Mr.R.Vijayakumar

2. M/s. Nachil Latex Private Limited,
Rep. by its Authorized Signatory,
Mr.R.Vijayakumar.

Petitioners

Vs

1.M/s.Sikora Salavador International Limited,
Rep. By its Managing Director,
Mr.S.Ramkkrishnan.

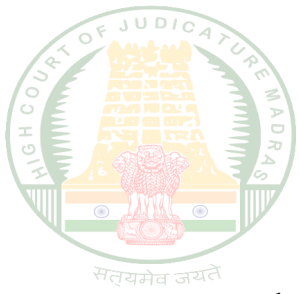
2.Mr.S.Ramakrishnan

Respondents

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the impugned order dated 21.04.2025 passed in I.A. No. 1 of 2024 in C.O.S. No.544 of 2022 passed by the Principal Commercial Court at Egmore, Chennai.

For Petitioner : Mr.N.Ramakrishnan
for M/S.ARK Law Associates.

For Respondent : Mr.K.Gauthamkumar



ORDER

The revision arises out of the order dismissing an Application for condonation of delay of 813 days in filing the Application for restoration of the suit before the Commercial Court.

2. Heard Mr.N.Ramakrishnan, learned counsel for M/s.ARK Law Associates, appearing for the petitioners and Mr.A.Goutham Kumar, learned counsel for the respondents 1 and 2.

3. The learned counsel for the petitioner, Mr.N.Ramakrishnan would contend that the suit has been filed originally before this Court in the year 2011 and subsequently, it has been transferred to the City Civil Court in the year 2019 and from there to the Commercial Court in the year 2022. He would also state that the contesting respondents had also filed a suit for recovery of money against the revision petitioners and the said suit was decreed as exparte in the year 2013. He would also state that on coming to know of the exparte decree, steps have been taken to set aside the same and the same is pending.

4. The learned counsel would further state that the revision



petitioners were unaware of the dismissal of the suit and only on getting notice in the execution proceedings filed by the contesting respondents, in respect of the suit filed by them, the revision petitioners was even aware of the exparte decree and also the dismissal of the suit filed by the revision petitioners. It is the contention of the Mr.N.Ramakrishnan, learned counsel for the petitioner that the delay has been properly explained in the Application for condonation of delay, where it has been clearly set out that there was change in Directorship and there was no occasion for the present Directors to follow up the suit. He would also state that no prejudice would be caused to the contesting respondents, since for nine long years written statement was not even filed. He would therefore pray for the revision being allowed, by condoning the delay and giving an opportunity to the revision petitioners to prosecute the suit on merits.

5. Per contra, Mr.A.Gautham Kumar, learned counsel for the respondents would state that both the suits, that is the suit filed by the revision petitioners as well as by the respondents were filed in the year 2011. He would state that written statement was filed by the respondents 1 and 2 in the present suit when it was pending before the City Civil



Court, even before the suit was transferred to the Commercial Court. He would point out to the continuous absence of the revision petitioners, for 16 hearings before the Commercial Court itself and even earlier on many occasions, before the City Civil Court.

6. Mr.Gauthamkumar, learned counsel for the respondents would further state that in a Commercial Suit, such huge and inordinate delay is fatal and even if cause has been shown to be sufficient or bonafide, considering the objects of the Commercial Courts Act, the condonation of the delay has to be refused. The learned counsel would also point out that the petition has been filed invoking Order IX Rule 4 CPC to set aside the exparte decree and the same is not applicable to the facts of the present case. He would contend that only under Order IX Rule 9 CPC would apply.

7. Further, Mr.Gautham Kumar would also contend that that even in the Execution Proceedings, the revision petitioner did not choose to appear and only when arrest warrant was issued, along with delay Applications, steps were taken, which clearly shows that the revision petitioners have been negligent throughout.



8. As regards the change of Directors, Mr.Gautham Kumar, would state that it is not a ground for seeking condonation of delay since the Company is a separate legal entity and further, one of the Directors continued to be a Director throughout and therefore, the excuse or reasons cited by the revision petitioners is wholly unsustainable.

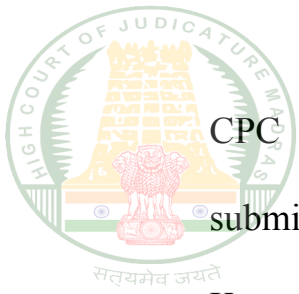
9. The learned counsel would rely on the decision in *Government of Maharashtra (Water Resources Department) represented by Executive Engineer Vs. Borse Brothers Engineers and Contractors Private Limited*, reported in (2021) 6 SCC 460, where the Hon'ble Supreme Court has held that speedy resolution of disputes being the object of the Commercial Courts Act, the expression 'sufficient cause' is not elastic enough to cover long delays, beyond the period provided in the appeal provision itself and further held that the said expression is not itself a loose panacea for the ill of pressing negligent and stale claims. On facts, the Hon'ble Supreme Court found even a delay of 75 days to be long and that sufficient cause had not been made out.

10. I have carefully considered the submissions advanced by the learned counsel on either side.



11. Admittedly, the present suit now before the Commercial Court was originally instituted before this Court in the year 2011. The suit has been filed for declaration that the plaintiffs are not liable to pay any monies to the defendants in respect of the subject cheque for Rs.35,00,000/- and for consequential reliefs of injunction and damages. At the time of institution of the suit, one Mr.R.Vijayakumar, being a Director of the first plaintiff and authorized signatory of the second plaintiff has represented the plaintiff and instituted the suit. It is also an admitted fact that the contesting respondents also filed a suit in the very same year for recovery of monies due and payable under the said cheque. Even in the said suit, the revision petitioners have remained exparte and only recently, they have taken out an Application to set aside the exparte decree along with an Application to condone delay that has occasioned in the interregnum period. The case of the revision petitioners is that only because of intervening covid and change of Directors, the suit could not be prosecuted and there being no follow up, the suit came to be dismissed for non-prosecution.

12. Insofar as the objections of the learned counsel for the respondents 1 and 2, with regard to the invocation of Order IX Rule 4



CPC instead of Order IX Rule 9 CPC, though I find force in the submissions of the learned counsel for the respondents Mr.Gautham Kumar, considering the fact that I am only testing the Section 5 Application for condonation of delay, it is not necessary, at this stage, to go into the proper invocation of provisions seeking to set aside the exparte decree.

13. Though it is contended by the revision petitioners that the Director who signed the plaint resigned in the year December 2011 and two other Directors, Kumarasamy and Meganathan who were inducted in the year 2004 and 2011 respectively, resigned in 2011 and 2019 respectively, I find that out of the present two Directors, viz., Velayudham Ulaganathan was appointed way back in December 2011 and he continues to be a Director even as on date. Insofar as the second plaintiff as well, the said Velayudham Ulaganathan having been appointed as Director on 06.01.2012 continues to be one of the Directors ever since, along with another Director, P.Nellaiyappan.

14. In view of the above, there is no justification to contend that in view of the change of Directors, the suit could not be followed up.



Firstly, the revision petitioners being incorporated as a Company under the Indian Companies Act, enjoys separate legal status and citing that there has been change of Directors can never be a satisfactory or acceptable ground when the Application is taken out for condonation of delay to restore a suit filed by the revision petitioners themselves. Secondly, there is no explanation as to why the other Director, Mr.Velayudham Ulaganathan, who has been there throughout was not in a position to take any steps to follow up the suit, either during the period when it was pending but also subsequently, when the suit came to be dismissed for non-prosecution.

15. It is also seen that even before the Executing Court as early as in September 2024, the revision petitioners who were served with notice, did not take immediate steps to have the suit restored to file. The Applications came to be filed in November 2024 after lapse of close to two months. The same clearly exhibits the negligent and callous attitude of the revision petitioner.

16. Even in *Government of Maharashtra (Water Resources Department)'s* case, (referred herein supra), the Hon'ble Supreme Court



has held that in matters of commercial nature, the expression ‘sufficient cause’ cannot be viewed leniently. No doubt, the suit was originally filed as a regular suit before this Court and subsequently, in 2022 alone, it was transferred to the Commercial Court. Even otherwise, there is no proper satisfactory explanation adduced on the side of the revision petitioners for not following up the said suit, having filed it in 2011 before this Court. The Trial Court has rightly dismissed the Application for condonation of delay.

17. As regards the delay being attributable to Covid 19 pandemic, even after the lock down being lifted and the Hon’ble Supreme Court also excluded a substantial period from limitation, the Section 5 Application came to be filed only in November 2024. In any event, the the excuse of Covid 19 pandemic cannot be accepted since the case of the revision petitioners itself is that they were unaware of the proceedings until when they received notice in the Execution Petition.

18. In the light of the above, I do not find any infirmity in the findings arrived at by the Commercial Court in dismissing the Application of condonation of delay. There is no valid ground to interfere



with the order of the Commercial Court dismissing Section 5 Application. Accordingly, this Civil Revision Petition is dismissed. No costs.

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Index : Yes / No

Internet : Yes / No

To:

The Principal Commercial Judge,
Principal Commercial Court at Egmore,
Chennai.



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P.B.BALAJI, J.,

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Pre-delivery order in
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