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CRP NPD.No.2811 of 2025

THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.2811 of 2025 & CMP.No.15920 of 2025

1. Shanthamma
2. Krishnamma
3. Venkatesh
4. Varadhappa
Chandrappa [died]

. . . Petitioners

Versus

Rajamma

. . . Respondent

PRAYER : Petition filed under section 115 of Code of Civil Procedure to set aside the dismissal Order dated 04.12.2024 made in I.A.No.3 of 2023 in O.S.No.165 of 1998 on the file of the District Munsif cum Judicial Magistrate No.1 Court, Hosur.

For petitioners : Mr.L.Muthusamy

For respondent : No appearance



CRP NPD.No.2811 of 2025

ORDER

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Challenge has been made to the Order dismissal of the application filed by the petitioner to condone the delay of 62 days in filing a petition to set aside the exparte Order passed against the petitioners in the suit in O.S.No.165 of 1998, in the present Civil Revision Petition.

2. The suit in O.S.165 of 1998 has been filed by the plaintiff for declaration and permanent injunction. The said suit has been decreed exparte as against the petitioners. The petitioners had filed an application to set aside the exparte Order under Order IX Rule 13 of Code of Civil Procedure, with an application to condone the delay of 6277 days. The reason assigned by the petitioner for such a huge delay is that their counsel has not informed them and they were taking care of his brother's mentally challenged child. The trial Court had infact allowed the application on condition of payment of Rs.1500/- to Victim Compensation Scheme on or before 25.11.2022. The petitioner also paid the amount directly to the Legal Services Authority on 31.01.2023 and as the Order has not been complied in time, the application has been



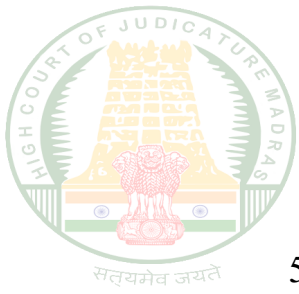
CRP NPD.No.2811 of 2025

WEB COPY

dismissed. Thereafter, an application in I.A.No.3 of 2023 has been filed to condone the further delay of 62 days in filing a petition to restore the application which was dismissed for non payment of costs. However, the trial Court has dismissed that application. Challenging the same, the present Civil Revision Petition has been filed.

3. Despite notice served to the respondent, none appeared for the respondent.

4. I have perused entire materials available on record. In fact the trial Court has condoned the huge delay and has granted opportunity to the petitioner to contest the suit on payment of costs. Though the payment was made on 31.01.2023 and the receipt is also available in the records, the trial Court dismissed the application for non payment of costs within the time granted by the trial Court. Of course, there is negligence on the party of the party.

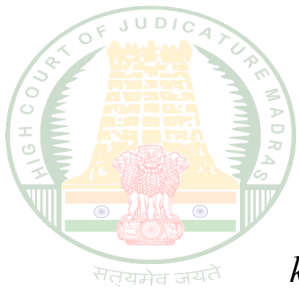


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5. It is relevant to note that the Hon'ble Apex Court in the case of ***Robin Thapa vs. Rohit Dora*** reported in ***(2019) 7 SCC 359*** held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

6. Further, the Hon'ble Supreme Court, in ***Collector, Land Acquisition, Anantnag and others v. Mst.Katiji and others*** reported in ***(1987) 2 SCC 107***, followed in ***Raheem Shah and another v. Govind Singh and others*** reported in ***(2023) 18 SCC 746***, has held as follows :

“3.The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on “merits”. The expression “sufficient cause” employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life-purpose for the existence of the institution of courts. It is common



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knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical



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CRP NPD.No.2811 of 2025

grounds but because it is capable of removing injustice and is expected to do so.”

Taking note of all above facts and circumstances, the trial Court has in fact exercised its discretion and granted an opportunity to the petitioner and merely on some mistake and negligence on the part of the party, their substantial right cannot be defeated.

7. Accordingly, this Civil Revision Petition is allowed and Order of the trial Court in I.A.No.3 of 2023 in O.S.No.165 of 1998 dated 04.12.2024 is set aside. No costs. Consequently, connected miscellaneous petition is closed.

06.08.2025

Index : Yes / No

Internet: Yes

Speaking/non speaking order

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To,

The District Munsif cum Judicial Magistrate No.1 Court,
Hosur.

Page 6 / 7



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CRP NPD.No.2811 of 2025

N. SATHISH KUMAR, J.

vrc

CRP NPD No.2811 of 2025

06.08.2025