



WEB COPY



C.M.P. No.17089 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.10.2025

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

C.M.P.No.17089 of 2025

in

Cros.Obj.SR.No.106728 of 2025

S.Ganesan
S/o.Subbu Gounder,
Kottaikadu, Veerapandi, Mettu Street,
Veerapandi Village, Salem District.

...Petitioner

Vs.

1.Perumayee,
W/o.Late Kailsam.

2.Saraswathi,
D/o.Late Kailasam,

Both are residing at
Odakkattuvalasu, Poolampatti Village and Post,
Idapadi Taluk, Salem District.

3.M.Karunanithi,
S/o.Munusamy,
Oonaparaikattu Valavu, Poolampatti Village and Post,
Idappadi Taluk, Salem District.

...Respondents

PRAYER:

Civil Miscellaneous Petition filed under Section 5 of the



C.M.P. No.17089 of 2025

Limitation Act to condone the delay of 1917 days in filing the above cross appeal SR.No.106728 of 2025 filed in A.S.No.115 of 2019 filed against the Judgment and decree dated 16.07.2018 made in O.S.No.138 of 2010 on the file of the learned Second Additional District Court, Salem and thus render justice.

APPEARANCE OF PARTIES:

For Petitioner : Mr.R.Nalliyappan, Advocate.

For Respondents : Mr.N.Manoharan, Advocate
for R1 & R2.
R3 – served.

O R D E R

Heard

2.The petitioner seeks condonation of 1917 days' delay in filing the Cross Appeal against the judgment and decree dated 16.07.2018 in O.S. No. 138 of 2010 on the file of the Second Additional District Court, Salem.

3.The petitioner states that he had filed the original suit for specific performance of a sale agreement dated 01.02.2010, and in the alternative, for refund of advance. The suit was partly decreed by directing refund of advance with Rs.10 lakhs compensation.



C.M.P. No.17089 of 2025

4.He submits that during the pendency of the respondents' appeal in A.S. No. 115 of 2019, there were settlement discussions at the instance of panchayatars, on which belief he refrained from filing a cross appeal. When no settlement materialised, he filed the present petition, stating that the delay was bona fide and not wilful.

5.The respondents deny the petitioner's averments, contending that no panchayat or mediation took place and that the affidavit lacks particulars. They argue that the petitioner remained inactive for over six years despite knowledge of the proceedings and that condoning such inordinate delay would prejudice them and protract the appeal.

6.This Court has considered the rival submissions and perused the records.

7.It is seen that the delay is substantial; however, this Court is not inclined to conduct a roving enquiry into the correctness of the reasons stated in the petition, as it would amount to a mini-trial on the condonation application itself.



C.M.P. No.17089 of 2025

8.The settled position of law is that when substantial justice and technical considerations are in conflict, the former must prevail, provided there is no deliberate negligence or mala fides. The petitioner's explanation, though lacking in detail, does not indicate wilful inaction.

9.Since the main appeal in A.S. No. 115 of 2019 is pending, no irreparable prejudice will be caused to the respondents if the delay is condoned, whereas refusal would defeat adjudication on merits; this Court finds sufficient cause to condone the delay, albeit on terms of substantial costs.

10.In the result, the delay of 1917 days in filing the Cross Appeal is condoned, subject to the petitioner paying costs of Rs.25,000/- (Rupees Twenty five Thousand only) to the respondents on or before 06.11.2025. Upon such payment, the Registry shall number the Cross Appeal if the same is otherwise in order and post it along with A.S. No. 115 of 2019 for final hearing on 14.11.2025.

23.10.2025



C.M.P. No.17089 of 2025

WEB COPY

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

DR. A.D. MARIA CLETE, J

ay

To

1.The II Additional District Court,
Salem.

2.The Section Officer,
V.R.Section, High Court of Madras,
Chennai.

C.M.P.No.17089 of 2025
in
Cros.Obj.SR.No.106728 of 2025



WEB COPY



C.M.P. No.17089 of 2025

23.10.2025