

THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 22.09.2025

Judgment pronounced on : 26.09.2025

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THE HON'BLE MR. JUSTICE P.B.BALAJI

**CMP. No.22572 of 2024
in AS.SR. No.116084 of 2024**

M/s Winsome Industries,
G-I A, SITCO, Hosur,
represented by the proprietor,
Balakrishna Reddy,
S/o.Pappaiah Reddy,
Jeemangalam Village,
Bagalur Post, Hosur Taluk.

..Appellant

Vs.

1.Venugopal Reddy
2.Govinda Reddy
3.Saraswathi
4.Subramani
5.Lakshmi Narayanan
6.Tamil Nadu Industrial Investment
Corporation Limited,
Represented by its Branch Manager,
Special Recovery Branch Office,
Vaalmeeki Street, Subramaniya Nagar,
Salem:5.

..Respondents

Prayer: Civil Miscellaneous Petition is filed under Section 5 of Limitation Act, to condone the delay of 4591 days in filing the above Appeal.

For Appellant : Mr.S.Mukunth,
Senior Counsel for
Mr.V.Nicholas



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For Respondents : Mr.A.K.Sriram,
Senior Counsel for
Mr.V.Murali for R1 to R5
No Appearance for R6

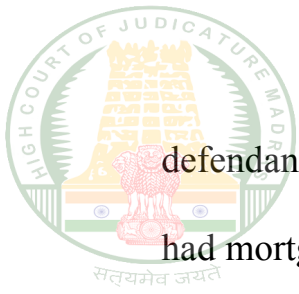
ORDER

The petitioner has filed an Application seeking condonation of delay of 4591 days in filing the First Appeal.

2. I have heard Mr.S.Mukunth, learned Senior Counsel for Mr.V.Nicholas, learned counsel for the petitioner and Mr.A.K.Sriram, learned Senior Counsel for Mr.V.Murali, learned counsel for the respondents 1 to 5.

3. Mr.S.Mukunth, learned Senior Counsel appearing for the petitioner would first and foremost contend that though the delay appears to be huge in numbers, the petitioner has, in fact, been able to demonstrate satisfactory reasons for condonation of the said delay in preferring the First Appeal.

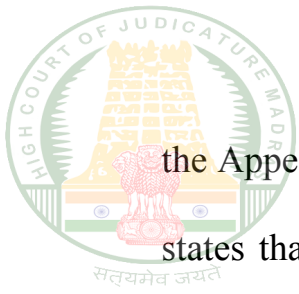
4. Mr.Mukunth, learned Senior Counsel would further contend that the suit has been filed for partition of joint family property amongst eight members in O.S. No.188 of 2004. The defendants 1, 4 and 5 and husband of the third



defendant had sold their shares to the second defendant. The second defendant had mortgaged the property with Tamil Nadu Industrial Investment Corporation Limited, (TIICL) and in view of the default committed by the second defendant, the property was brought for sale in public auction on 23.04.2004 and the revision petitioner was the successful bidder and he has purchased the property in said auction.

5. The learned Senior Counsel would further state that the second suit was filed in O.S. No.1 of 2007 against TIICL as well as the revision petitioner to declare the sale deed in favour of the revision petitioner as null and void. The said suit came to be decreed on 29.10.2011. It is the specific contention of the learned Senior Counsel Mr.S.Mukunth, that the counsel for the revision petitioner died on the very next day i.e., on 30.10.2011 and the auction purchaser had no notice about the proceedings and there was no occasion for the petitioner to challenge the decree passed in O.S.No.1 of 2007.

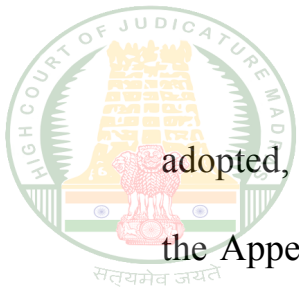
6. It is further contended by the learned Senior Counsel that only when the respondents had moved an Application in CMP. No.12865 of 2024 in A.S. No.823 of 2008, the petitioner was put on notice about the exparte decree and immediately, he has taken steps to apply for certified copy and thereafter, filed



the Appeal with the delay petition. The learned Senior Counsel would therefore states that the delay has been satisfactorily explained and only in view of the demise of the counsel who was appearing and advising the petitioner, the petitioner was in dark and the delay is neither wilful nor wanton.

7. The learned Senior Counsel Mr.S.Mukunth would also state that as against the same property in respect of the suit for partition, First Appeal is pending in A.S. No.823 of 2008 and therefore, no prejudice would be caused to the respondents, if the delay is condoned and the present Appeal is also heard along with other Appeal in A.S. No.823 of 2008.

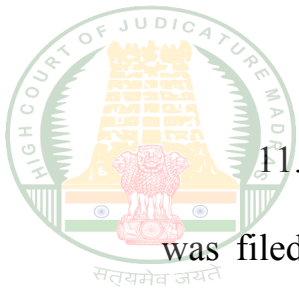
8. Mr.S.Mukunth, learned Senior Counsel also relied on the decision of this Court, in *Joint Commissioner, Hindu Religious and Charitable Endowment Department, Trivandrum Road, Palayamkottai, Tirunelveli District Vs. Ambasamudram Taluk, Ambasamudram Vetta Thirukoil, Paniyalargal Sangam Reg. No.500/TNL, rep. through its Secretary, P.Ramasamy and others*, reported in, 2006 (1) CTC 45, where this Court held that while considering condonation of delay Applications, the Court should not start with the presumption that the delay is deliberate or malafide as a litigant does not stand to benefit by resorting to delay and that therefore, a justice-oriented approach should be



adopted, if sufficient cause for condonation of delay is shown in institution of the Appeal, then irrespective of length of the delay, the Court should consider allowing the condonation of delay application on the basis of substantial justice and not refuse to condone delay on a technical approach.

9. Per contra, Mr.A.K.Sriram, learned Senior Counsel appearing for the respondents would state that the affidavit filed in support of the Application for condonation of delay does not make out any sufficient cause for condoning the huge delay of close to 13 years. He would point out that the petitioner had entered appearance in the suit and even filed the written statement and thereafter, did not choose to contest the suit.

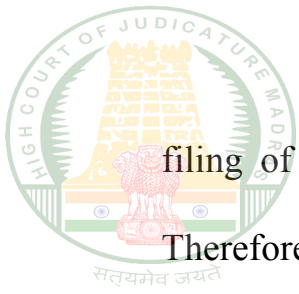
10. The learned Senior Counsel, Mr.A.K.Sriram would further invite my attention to the dates which are pleaded by the petitioner for explaining the delay and referring to the same, he would state that the petitioner admits to have knowledge about the decree passed only when he was served with an Application in CMP. No.12865 of 2024, however, which was on 10.06.2024. However, there is no explanation as to why Copy Application was made only on 30.07.2024 and despite copies being ready on 06.08.2024, the appeal has not been filed until 29.08.2024.



11. The learned Senior Counsel would further state that even the Appeal was filed at the first instance without certified copies of the judgement and

decree on 30.08.2024 and subsequently, only on 10.09.2024, the appeal was re-presented with the certified copy of the judgment and decree of the Trial Court.

It is therefore, the contention of the learned Senior Counsel, Mr.A.K.Sriram, that the petitioner has been careless and he has only tried to take advantage of the fact that his counsel passed away on the very next day of the suit being decreed by the Trial Court. He would also point out that the Copy Application has been filed through the very same Office and in fact, the son of the earlier Counsel was very much an Advocate in the same Office and in the connected proceedings also, the very same Counsel has been advising the petitioner. When the petitioner was fully aware of the matter being subjudice in the suit for partition and an Appeal has also been filed before this Court even in the year 2008, to contend that the petitioner was totally in dark and did not know about the proceedings is totally unbelievable. In fact, Mr.A.K.Sriram, learned Senior Counsel would also point out to the counter filed to the Application for condonation of the delay, where the respondent has clearly stated that the petitioner is a court bird and he is not illiterate and there has been not only a huge delay of 13 years, but the delay is inordinate and unexplained as well. He would further point out that if the delay is to be calculated from the date of

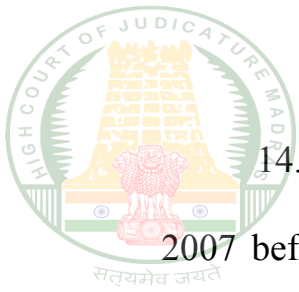


filing of the written statement in the suit, it would be more than 17 years.

Therefore, Mr.A.K.Sriram, learned Senior Counsel would state that absolutely no indulgence should be shown to the petitioner.

12. As regards the contention of the learned Senior Counsel Mr.S.Mukunth, that since there is connected proceedings pending before this Court in A.S. No.823 of 2008, no prejudice would be caused if the delay is condoned and the Appeal is taken on file, Mr.A.K.Sriram, learned Senior Counsel would contend that the decree in the other suit has nothing to do with the present suit in O.S. No.01 of 2007 and therefore, he would contend that the appeals need not be heard together. He would therefore pray for the dismissal of the Application. In support of his contention, he would rely on the decision of the Hon'ble Supreme Court in *Rajneesh Kumar and Another Vs. Ved Prakash*, reported in 2024 INSC 891.

13. I have carefully considered the submissions advanced by the learned Senior Counsel on either side. I have also gone through the records including the order of the Trial Court.



14. The revision petitioner herein is the second defendant in O.S. No.1 of 2007 before the learned Additional District Judge, Krishnagiri. The revision petitioner is an auction purchaser, the auction having been conducted by the first defendant, TIICL. TIICL was a defendant in the other suit for partition in O.S. No.188 of 2004 and the petitioner is the successful auction purchaser in respect of Item 7 to 9 and 11. Admittedly, sale deed has also been executed and registered in favour of the revision petitioner. Not only TIICL, but also the revision petitioner is a party defendant in O.S. No.188 of 2004. In fact, challenging the preliminary decree, it is the petitioner who has preferred an Appeal before this Court in A.S. No.823 of 2008.

15. In order to explain the delay of 4591 days, the petitioner has given the following reasons in the affidavit:-

(i) The petitioner has engaged an Advocate by name Mr.N.S.Sankara Narayanan at Krishnagiri and vakalat and written statement was filed in O.S. No.1 of 2007.

(ii) The learned counsel did not provide any intimation regarding the trial of the suit.

(iii) The health of the Advocate was affected and he was bedridden for more than six months in the year 2011.



(iv) His Office could not concentrate on the pending cases in the Courts at Krishnagiri.

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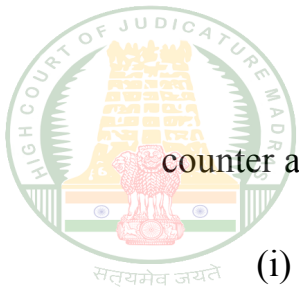
(v) The Advocate Mr.N.S.Sankara Narayanan, died on 30.10.2011, one day after the decree was passed on 29.10.2011.

(vi) Even after the demise of his Counsel, his office could not concentrate on any of the cases for six months, due to his ill health and upto his demise on 30.10.2011 and subsequently.

(vii) The respondents 1 to 5 have suppressed the suit in O.S. No.188 of 2004 in the present suit.

(viii) Only when the plaintiffs in O.S. No.188 of 2004, filed CMP. No.12865 of 2024 to receive the certified copies of the judgment and decree dated 29.10.2011 in O.S. No.1 of 2007, the petitioner came to know about the exparte decree having been passed on 29.10.2011. Therefore, it is contended that the delay neither wilfull nor wanton, but only on account of the petitioner being kept in the dark which was also on account of ill health of his counsel who also subsequently died.

16. The said application has been strongly resisted by the respondents 1 to 5 by filing a detailed counter affidavit. The sum and substance of the



counter affidavit is that:-

(i) the reasons assigned by the petitioner for the delay are false and misleading and invented for the purpose of condonation of delay.

(ii) The respondents have disclosed the pendency of O.S. No.188 of 2004 and the allegation that they have suppressed the same is incorrect.

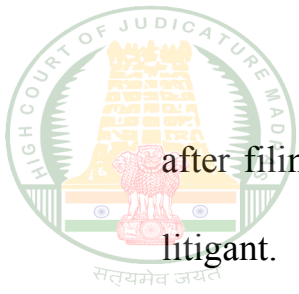
(iii) The petitioner has been hotly contesting the suit from inception and in fact, the suit itself was filed by the respondents has indigent persons and even the Application under Order XXXIII Rule 1 CPC was opposed by the revision petitioner.

(iv) Written statement was filed as early as 06.08.2007 and thereafter, the petitioner did not diligently follow up the matter, which has alone resulted in the exparte decree being passed.

(v) The petitioner is not an illiterate person and has served as Minister in the Government of Tamil Nadu and therefore, he cannot claim to be ignorant of court procedure.

(vi) The son of the Counsel, Mr.N.S.Sankara Narayanan, is also a practicing Advocate in the same Office and therefore, to blame the counsel for non appearance of the revision petitioner is not in good taste.

(vii) The petitioner has not chosen to follow up the case for 17 long years



after filing the written statement which cannot be an accepted conduct of any litigant.

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(viii) The learned counsel who was engaged by the petitioner was a leading Senior Advocate in Krishnagiri and the petitioner, who also hails from nearby Hosur Taluk would have surely got to know about the demise of the counsel and in any event, the petitioner has to blame himself for not contacting the son of his counsel viz., Mr.N.S.Raja Ganesh who has been continuing to run the Office, after the demise of his father N.S.Sankara Narayanan.

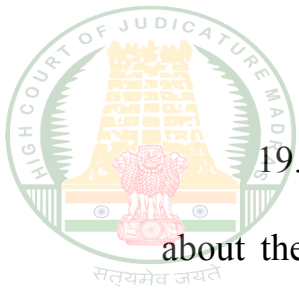
(ix) Having slept over the matter for more than 13 years atleast, if not 17 years, the petitioner cannot seek indulgence of this Court, especially when he regularly purchases litigation properties for throw away prices in his name and also in the name of close relatives and namesake Companies. The respondents are all Senior Citizens and if the delay is condoned, then they will not be able to see finality of litigation, during their lifetime.

17. No doubt, the length of delay is 4591 days. The only ground which in fact been projected is that one day after the decree was passed, the Counsel engaged by the petitioner died and therefore, the petitioner was totally in dark and he did not know about the fate of the suit. It is also contended that he came to know about the decree only when a Miscellaneous Application was taken out



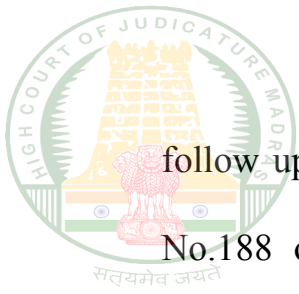
in connected Appeal filed by the petitioner and pending before this Court in A.S. No.823 of 2008 and thereafter, steps have been taken to apply for certified copies of the judgement and decree and the appeal has been filed in the interregnum period since the delay has occasioned, the Application for condonation of delay has also been taken out.

18. The revision petitioner, is admittedly an auction purchaser in a public auction and according to the petitioner he has paid the entire auction purchase money and sale deed has also been executed in his favour. As a prudent purchaser, the petitioner cannot be expected to contend that having engaged a Counsel and filed a written statement in the year 2007, the petitioner has not taken any steps to follow up the suit and know the fate of the same. In fact, such a submission on the face of the circumstances, appears to be not believable, for the simple reason that the petitioner has been one of the defendants in the other suit for partition in O.S. No.188 of 2004, which was also being tried only before the Courts at Krishnagiri and having suffered a preliminary decree in the said suit, the petitioner himself has also filed an Appeal before this Court and the same is pending in A.S. No.823 of 2008.



19. In such circumstances, to expect an auction purchaser to totally forget about the pending cases and claim that he was not informed by the Counsel about the decree passed, is certainly an excuse which cannot be bought. Courts have repeatedly held that the litigants have to diligently follow up their cases and only under circumstances where, despite all care and exercise of due diligence, some adverse orders come to be passed exparte, then the Court can step in and condone the delay in taking out appropriate applications. However, in the present case, the petitioner has purchased the property way back in the year 2004 and he admittedly, has been arrayed as defendant in the suit for partition and the suit has been contested and a preliminary decree has been passed in favour of the plaintiff in the said suit. Aggrieved by the same, the petitioner has alone preferred the First Appeal before this Court in A.S. No.823 of 2008. Therefore, it is not as if the petitioner was totally ignorant of what was happening with regard to the subject property.

20. The only reason which I am able to decipher from the entire affidavit is that his counsel died on the very next day of the suit having been decreed and none of the other Advocates in the Office counsels were in a position to follow up the matter. Having entered appearance in the suit and also having filed written statement way back on 06.08.2007, it was the duty of the petitioner to



follow up the matter with the counsel. In fact, in the suit for partition in O.S.

No.188 of 2004, the revision petitioner has not only been arrayed as 7th

defendant but he has also contested the said suit and the suit was decreed on

30.04.2008. Even in the said suit, the same counsel Mr.Sankara Narayanan

alone has represented the revision petitioner and aggrieved by judgment and

decree, the petitioner has also filed First Appeal before this Court, which is

admittedly pending. Therefore, having actively contested the suit for partition

and also having challenged the same by way of an Appeal before this Court as

late as 2008, to contend that the petitioner did not get any intimation from his

counsel in the other suit in O.S. No.1 of 2007, especially when the suit itself

has been filed to declare the very sale deed in favour of the petitioner as null

and void, is certainly not normal expected behaviour of a prudent or reasonable

litigant, whose purchase itself is being challenged. I do not find that the

petitioner has made out sufficient cause for the delay of 4591 days.

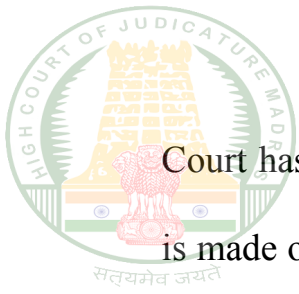
21. No doubt, each and every days delay is not required to be explained.

However, the cause which is shown by the petitioner should be sufficient and

acceptable, before the Court can take a decision to condone the delay. No

doubt, this Court in *Joint Commissioner's case* (referred herein supra) has held

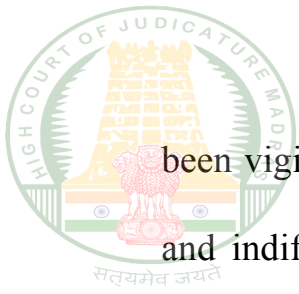
that length of delay is immaterial, but however, even in the said decision, this



Court has reiterated that the delay can be condoned only when sufficient cause is made out and in such circumstances, the length of delay would not be really significant.

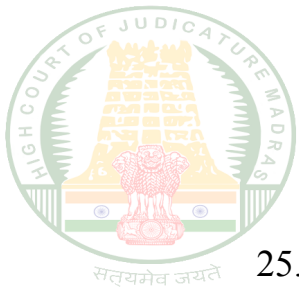
22. The Hon'ble Supreme Court in *Rajneesh Kumar's* case (referred herein supra), deprecated the practice of blaming the Advocate who appeared for the party in the Trial Court. The Hon'ble Supreme Court has held that even if the lawyer concerned was careless or negligent, it cannot be a ground to condone long and inordinate delay, as the litigant owes a duty to be vigilant of his own rights and is expected to be vigilant about proceedings pending in the Court. When the petitioner has engaged the very same Counsel for not only defending the suit but also another suit and in view of the fact that even when there was a necessity to apply for a certified copy of judgment and decree in O.S. No.1 of 2007, the petitioner has in fact gone back to the very same counsel's office and made the Copy Application would all go to show that the petitioner is only projecting the death of his erstwhile counsel Mr.N.S.Sankara Narayanan as an excuse, for not following the suit and cover up latches on his part.

23. As held by the Hon'ble Supreme Court, the petitioner ought to have



been vigilant in contesting the suit and clearly, the petitioner has been careless and indifferent for more than a decade. As rightly contended by the learned Senior Counsel, Mr.A.K.Sriram, having filed the written statement in the suit, which challenges the very purchase of the property by the petitioner, to state that the petitioner never followed up the matter from 2008 onwards, for 17 long years is clearly smacking of carelessness and indifference. Such acts of the petitioner cannot be condoned by the Court.

24. As regard the other contention that since the other Appeal is pending at the instance of the petitioner herein, challenging the preliminary decree passed in O.S. No.188 of 2004, no prejudice would be caused, I do not see how the pendency of the Appeal as against the decree for partition would have any direct bearing on the present suit for setting aside the sale in favour of the auction purchaser. The petitioner, having preferred the Appeal in A.S. No.823 of 2008, is well within his rights to prosecute the same on merits and in accordance with law and merely because, the subject property in both the Appeals is one and the same, it cannot give ground for the petitioner to seek condonation of huge and inordinate delay that has occasioned purely on account of his deliberate and careless attitude.



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25. In view of the above, I do not find that the petitioner has shown any satisfactory reasons acceptable to the Court in order to condone the huge and inordinate delay of 4591 days. I do not find any merits in the Civil Miscellaneous Petition. Accordingly, this Civil Miscellaneous Petition is dismissed. Consequently, the Appeal Suit is rejected at the SR stage itself. No costs.

26.09.2025

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
rkp

To

1. The Additional District Judge,
Krishnagiri.
2. Tamil Nadu Industrial Investment
Corporation Limited,
Represented by its Branch Manager,
Special Recovery Branch Office,
Vaalmeeki Street, Subramaniya Nagar,
Salem:5.



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P.B.BALAJI.J,

rkp

Pre-delivery order made in
CMP. No.22572 of 2024
in AS.SR. No.116084 of 2024

26.09.2025