



CRP NPD.No.3460 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

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Date : 01.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRP [NPD] No.3460 of 2023

A.Pradeep Kumar

. . . Petitioner

Versus

1. Thirumoorthy
2. Thangathaal
3. Mayilsamy
4. Mani
5. Janaki
6. Megala

. . . Respondents

PRAYER : Petition filed under section 115 Code of Civil Procedure to set aside the Order and final Order passed in I.A.No.481 of 2020 in O.S.No.274 of 2013 on the file of the District Munsif Court, Udumalpet and allow this Civil Revision Petition.

For petitioner : Mr.S.Prabhu

For respondents : No appearance

ORDER

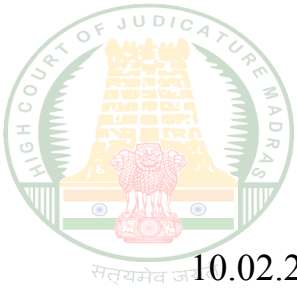


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Challenge has been made to the dismissal of the application filed to condone the delay of 609 days in filing an application under Order IX Rule 9 of Code of Civil Procedure to restore the suit which was dismissed for default, in the present Civil Revision Petition has been filed.

2. The suit in O.S.No.274 of 2013 has been filed by the revision petitioner for permanent injunction. It is the contention of the learned counsel appearing for the petitioner that he had purchased the suit property for valuable consideration on 02.01.2013 and he is in possession and enjoyment of the property from the date of purchase. The defendants, who his neighbouring land owners are trying to interfere with the possession of the revision petitioner. Hence, he had filed the suit against the respondents. As the petitioner failed to appear before the Court on 18.07.2018, the suit has been dismissed for default. An application has been filed by the petitioner to restore the suit along with an application to condone the delay of 609 days. The reasons assigned for the delay is that he was affected by jaundice and he went to Kerala for taking treatment and he returned back to Udumalpet on



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10.02.2020 and only in later part of time, he came to know about the dismissal of the suit. Therefore, the petitioner had filed an application to condone the delay of 609 days to restore the suit which was opposed by the respondents on the ground that no valid or satisfactory reason for the delay and that no documentary evidence has been produced by the petitioner. Based on the pleadings, the trial Court has dismissed the application. Challenging the same, the present revision petition has been filed.

3. It is the contention of the learned counsel appearing for the petitioner that as the petitioner was affected by jaundice and he was taking treatment in Kerala and thereafter, he was not able to contact his counsel. Therefore, submitted that he may be given an opportunity and the suit may be restored.

4. Despite notice served to the respondents, none appeared for them.

5. Heard the learned counsel appearing for the petitioner and perused entire materials available on record.



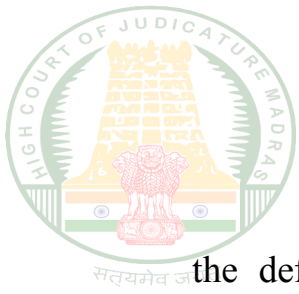
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6. While condoning the delay, the length of the delay is not a matter.

The Court has to find out whether sufficient cause is shown or not and further it has to see whether it would cause any serious impact on the substantive right of the parties also. On a perusal of the application filed by the petitioner it is seen that there is no proper reasons adduced except contending that he took treatment for jaundice in Kerala and thereafter, he was not able to contact his counsel. Be that as it may.

7. The very suit itself has been filed by the revision petitioner for permanent injunction as the respondents interfered with the possession of the revision petition. Though no proper reasons have been given to condone such a huge delay, the Court has to take note of the interest of the parties involved in this matter and the substantive right of the petitioner cannot be denied on the ground of delay. 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



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the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

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8. 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 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



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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.

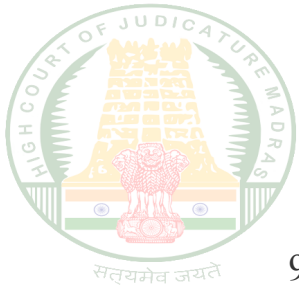
3. “Every day's delay must be explained” does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

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

In the light of the above, this Court is of the view that one more opportunity has to be given to the petitioner to adjudicate his rights on merits.



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9. Accordingly, this Civil Revision Petition is allowed and Order of the trial Court in I.A.No.481 of 2020 in O.S.No.274 of 2013 dated 02.03.2023 is set aside. No costs.

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Index : Yes / No

Internet: Yes

Speaking/non speaking order

vrc

To,

The District Munsif,
Udumalpet.



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N. SATHISH KUMAR, J.

VTC

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