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CMP. No.23970 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:25.11.2025

Pronounced on:28.11.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CMP. No.23970 of 2024
in AS.SR. No.133060 of 2024**

R.Anandheeswaran

Petitioner(s)

Vs

D.Mani

Respondent(s)

PRAYER: This Civil Miscellaneous Petition is filed under Order 41 Rule 3-A of CPC, to condone the delay of 642 days in filing this appeal against the judgment and decree dated 13.09.2022 made in O.S. No.6 of 2016 on the file of the learned Additional District Court, Dharmapuri.

For Petitioners : Ms.M.Adhishree
For Respondent : Mr.Arun Anbumani

ORDER

The plaintiff in a suit for specific performance, is the petitioner herein, seeking to condone the delay of 642 days in filing the First Appeal.



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2. I have heard Ms.M.Adhishree, learned counsel for the petitioner and Mr.Arun Anbumani, learned counsel for the respondent.

3. The learned counsel for the petitioner would submit that the plaintiff's suit for specific performance was negatived by the Trial Court, however, the alternate relief for refund of advance was decreed. According to learned counsel for the petitioner, though the petitioner had established readiness and willingness, the Trial Court has erroneously declined to grant the relief of specific performance and hence the petitioner has challenged the decree of the Trial Court.

4. She would further state that though the judgment was passed on 13.09.2022, the petitioner was not informed about the same by his Counsel till recently and the petitioner was under the impression that the suit was pending. While so, it was only when the respondent attempted to create encumbrances, the petitioner took steps to verify the stage of the suit and came to know about the judgment having been delivered even in September 2022. Thereafter, the petitioner has applied for copies and copies were furnished only on 04.09.2024 and within a span of 10 days, the appeal has been filed.



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5. In support of her contention, the learned counsel for the petitioner has also relied on the following decisions:

(i) *Mool Chandra Vs. Union of India and another*, reported in (2025) 1 SCC 625;

(ii) *Sheo Raj Singh (Deceased) through Legal Representatives and others Vs. Union of India and another*, reported in (2023) 10 SCC 531; and

(iii) *Rafiq and another Vs. Munshilal and another*, reported in (1981) 2 SCC 788.

6. Per contra, Mr.Arun Anbumani, learned counsel for the respondent would submit that the affidavit is bereft of satisfactory explanation to condone delay of 642 days. He would also point out that the suit itself came to be filed after lapse of two and half years, from the date of the alleged agreement, which according to the respondent was not even an intended sale agreement, but only a loan transaction. He would further state that simply shifting the blame on the lawyer, the petitioner cannot get away and have a delay of more than two years condoned lightly. He would rely on the order passed by me in *Chitravel and another Vs. Jothimani*, reported in 2024(2) CTC 197.



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7. I have carefully considered the submissions advanced by the learned counsel on both sides and I have also carefully gone through the decisions that have been relied on by the learned counsel on either side.

8. The only reason given by the petitioner to explain the delay is that the petitioner was in dark upto August 2024, as the petitioner was given to understand the suit was pending and that the Counsel for the petitioner before the Trial Court did not inform the petitioner about the disposal of the suit. It is therefore contended by the petitioner that after coming to know of the decree, steps have been taken without any delay to obtain certified copies and thereafter, prefer the First Appeal.

9. No doubt, the Hon'ble Supreme Court has held in *Mool Chandra's* case as well as *Sheo Raj Singh's* case, (referred herein supra) that a liberal approach has to be adopted while examining an application to condone delay and that the length of delay is immaterial, if the cause shown is sufficient. In *Rafiq's* case (referred herein supra), the Hon'ble Supreme Court held that parties must not suffer for the fault of the Counsel. However, that was a case where an appeal was dismissed for non appearance of the Counsel for the appellant and in such



circumstances, the Hon'ble Supreme Court finding that the presence of the party was not required for hearing the appeal before the High Court, held that for the fault of the Counsel in not appearing in the appeal, the parties should not suffer. I do not see how this decision would apply to the facts of the present case.

10. Admittedly, the plaintiff has filed the suit for specific performance and it was his primary duty to diligently follow up the suit with his Counsel. The Advocates engaged by the parties are only agents of the parties to take care of the litigation. Therefore, the mere fact that an Advocate has been engaged does not mean that the parties need not follow up the matter and once adverse orders are passed or there is a delay, an attempt can be made to blame the Advocate for such default or delay and seek favourable orders in the condonation of delay application.

11. In fact, in *Chitravel's* case, (referred herein supra), I held that discretion of the Court to condone delay can be exercised only when sufficient and just cause is shown and reasons appear to be probable and not for the mere asking. I have also held that the parties cannot casually blame their Counsel who conducted the trial, especially behind the



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Counsel's back and get favourable orders from the Court, condoning huge and inordinate delay. The Hon'ble Supreme Court also, in a recent decision in *Shivamma (Dead) by LRS Vs. Karnataka Housing Board and others*, reported in 2025 INSC 1104, has reiterated the legal position that while considering an application for condone delay, the Court cannot go into the merits of the appeal or suit and the condone delay application has to be tested only on whether the sufficient cause is shown or not.

12. In the present case, I do not find that the petitioner has been able to satisfactorily explained the delay of 642 days in preferring the First Appeal. The affidavit is bereft of particulars, even with regard to the particulars as to when the petitioner actually came to know about the decree and what was the nature of encumbrance that was attempted by the respondent, which triggered the petitioner to take immediate steps to verify the status of the suit. Allegations are made against the Advocate that he did not even apply for a copy of the judgment and decree. Such self serving averments cannot be accepted on the face of such affidavits, especially when the Counsel who is accused of negligence or inaction is not put on notice.



13. The Hon'ble Supreme Court in *Rajneesh Kumar and Another*

Vs. Ved Prakash, reported in 2024 INSC 891, has also held as follows:

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“10. It appears that the entire blame has been thrown on the head of the advocate who was appearing for the petitioners in the trial court. We have noticed over a period of time a tendency on the part of the litigants to blame their lawyers of negligence and carelessness in attending the proceedings before the court. Even if we assume for a moment that the concerned lawyer was careless or negligent, this, by itself, 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 equally vigilant about the judicial proceedings pending in the court initiated at his instance. The litigant, therefore, should not be permitted to throw the entire blame on the head of the advocate and thereby disown him at any time and seek relief.”

14. In the light of the above, I am unable to satisfy myself that the petitioner has made out sufficient cause warranting an order of condonation of delay. Accordingly, this Civil Miscellaneous Petition is dismissed and consequently, the Appeal Suit is rejected at the SR stage itself. No costs.

28.11.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Additional District Judge, Dharmapuri.



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P.B.BALAJI, J.,

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Pre-delivery order in
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