



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-07-2025

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THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

C.R.P.No.1838 of 2025
and
C.M.P.No.10612 of 2025

R.Shanmugham

..... Petitioner

-Versus-

1.R.Selvaraj
2.R.Shanthi
3.R.Sulochana

..... Respondents

Petition filed under Section 115 of CPC praying to set aside fair order and decretal order in I.A.No. 1 of 2023 in unnumbered A.S.No..... of 2023 dated 20.07.2023 on the file of the learned Principal District Judge, Salem, Salem District, is even otherwise illegal, incompetent, irregular and without jurisdiction.

For Petitioner	: Mr.Pramod Raj for Mrs.Srimathi V.
For Respondent(s)	: Mr.T.S.Vijaya Raghavan for R2 Mr.V.Sekar for R3 No appearance for R1



ORDER

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This civil revision petition has been filed challenging the order dated 20.07.2023 passed by the learned Principal District Judge, Salem, dismissing the application in I.A.No.1 of 2023 in the unnumbered appeal suit of 2023 by the 1st defendant in the suit under Order XLI and Rule 3(A) of CPC praying to condone the delay of 634 days in filing the appeal.

2. The revision petitioner is the 1st defendant, the respondents 2 and 3 are the defendants 2 and 3, and the 1st respondent is the plaintiff in O.S.No.67 of 2008.

3. The said suit was filed seeking a preliminary decree for partition and division of the suit properties into four equal shares, allotment of one such share to the plaintiff, separate possession of the allotted share, and for mesne profits.

4. The contention of the 1st defendant is that the suit was decreed on merits on 18.08.2009, and the 1st defendant's appeal in A.S.No.972 of 2009 was dismissed. Based on the preliminary decree, a final decree was passed on 12.02.2021 in O.S.No.379 of 2010 on the file of the II Additional Subordinate Judge, Salem, which was contrary to the judgment in the appeal. Believing an appeal would be filed by his counsel, the 1st defendant waited, but later learned from local counsel that the appeal would lie before



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the District Court, not the High Court. Due to delay in retrieving the case bundle from earlier counsel, who claimed it was misplaced, the papers were received only on 28.11.2022, and an appeal was filed immediately thereafter. The delay of 634 days was neither wilful nor wanton, and if not condoned, would cause irreparable hardship to the 1st defendant.

5. The contention of the plaintiff is that the petition is false, misleading, and not maintainable either in law or on facts. The allegation that the final decree is contrary to the judgment in A.S.No.972/2009 is baseless and irrelevant. The petitioner, who has not paid court fees for his share and is enjoying the benefits of others' shares, falsely claims to have been misled by his counsels regarding the forum for filing the appeal. It is highly improbable that the Chennai counsel retained the case bundle for over 15 months without action, and the entire narrative appears fabricated to justify the inordinate delay of 634 days, which remains unexplained and unjustified. This respondent has already initiated execution proceedings in E.P.No.285/2022. Hence, the petition deserves to be dismissed with costs.

6. The contention of the 3rd defendant is that the petition is false, frivolous, and not maintainable in law or on facts. The allegation that the final decree dated 12.02.2021 is contrary to the High Court's judgment is baseless and irrelevant. The



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petitioner has not paid the court fees for his allotted share and continues to enjoy the common properties at the expense of other co-sharers. His claim that he was misdirected by counsels at Salem and Chennai to file the appeal before the High Court is unsubstantiated and appears to be a concocted story to justify the inordinate delay. There is no evidence of the alleged advice, handover, or return of the case bundle, nor any record of a returned appeal from the High Court. The petition is clearly an attempt to delay execution proceedings already initiated in E.P.Nos.290/2022 and 351/2022. The reasons cited for the delay are false and untenable. Hence, the petition deserves to be dismissed.

7. The trial court, after considering the averments, dismissed the delay condonation application. Aggrieved by the said order, the 1st defendant has filed the present revision petition seeking to set aside the impugned order, condone the delay, and direct the Principal District Judge to number the appeal and dispose of the same on merits and in accordance with law, as the appeal involves substantive rights and ought to be decided on merits in the interest of justice.

8. This Court heard Mr. Pramod Raj, learned counsel for the revision petitioner/1st defendant, Mr. T.S. Vijaya Raghavan, learned counsel for the 2nd respondent/2nd defendant, and Mr. V. Sekar, learned counsel for the 3rd respondent/3rd



defendant, and also carefully perused the records.

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9. The right of appeal is a substantive and valuable legal remedy, forming an integral part of the adjudicatory process. Courts must remain cautious not to defeat such rights on mere technical grounds, particularly where refusal to condone delay may result in miscarriage of justice.

10. In *Pathapati Subba Reddy (Died) by L.Rs. and Others v. Special Deputy Collector (LA)*, [2024 SCC OnLine SC 513], the Hon'ble Supreme Court reiterated that while a liberal and justice-oriented approach may be taken in condoning delay under Section 5 of the Limitation Act, such discretion must not be exercised mechanically or to revive stale claims without sufficient cause. The Court emphasized that terms such as “liberal approach,” “justice-oriented approach,” and “cause of substantial justice” cannot be employed in a manner that undermines the law of limitation, which confers substantive rights upon the parties and promotes legal certainty and finality.

“16. Generally, the courts have adopted a very liberal approach in construing the phrase ‘sufficient cause’ used in Section 5 of the Limitation Act in order to condone the delay to enable the courts to do substantial justice and to apply law in a meaningful manner which subserves the ends of justice. In *Collector, Land Acquisition, Anantnag v. Katiji*, [(1987) 2 SCC 107 : AIR 1987 SC 1353], this Court in advocating the liberal approach in condoning the delay for ‘sufficient cause’ held that ordinarily a litigant does not stand to benefit by lodging an



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appeal late; it is not necessary to explain every day's delay in filing the appeal; and since sometimes refusal to condone delay may result in throwing out a meritorious matter, it is necessary in the interest of justice that cause of substantial justice should be allowed to prevail upon technical considerations and if the delay is not deliberate, it ought to be condoned. Notwithstanding the above, howsoever, liberal approach is adopted in condoning the delay, existence of 'sufficient cause' for not filing the appeal in time, is a condition precedent for exercising the discretionary power to condone the delay. The phrases 'liberal approach', 'justice-oriented approach' and cause for the advancement of 'substantial justice' cannot be employed to defeat the law of limitation so as to allow stale matters or as a matter of fact dead matters to be revived and re-opened by taking aid of Section 5 of the Limitation Act."

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26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law laid down by this Court, it is evident that:

- (i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;
- (ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;
- (iii) The provisions of the Limitation Act have to be construed differently, such as Section 3 has to be construed in a strict sense whereas Section 5 has to be construed liberally;
- (iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial



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justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in Section 3 of the Limitation Act;

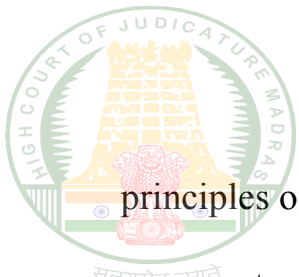
(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”

11. Though the explanation offered by the petitioner for the delay is not entirely satisfactory, it cannot be said to be wholly devoid of merit. In such matters, a liberal approach is warranted, particularly where the delay is not wholly devoid of explanation and the rights of parties are yet to be adjudicated on merits. Given the circumstances and the absence of any indication of mala fide intention or deliberate inaction, this Court is of the view that a reasonable cause has been made out. In furtherance of the



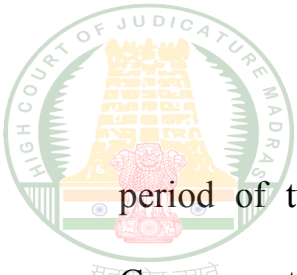
principles of substantial justice, it would be just and appropriate to afford the petitioners an opportunity to pursue the appeal on merits.

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12. In the interest of advancing substantial justice, and bearing in mind that the right of appeal is a valuable remedy, the substantive rights of the parties should not be denied on technical grounds. Procedural lapses alone should not frustrate the ends of justice. The delay stands explained to a reasonable extent, and any prejudice caused to the opposing party can be addressed by imposing appropriate costs.

13. In the light of the facts and circumstances of the present case, and upon consideration of the discussions made hereinabove, this court, bearing in mind the settled legal position, is inclined to adopt a pragmatic and liberal approach in the matter of condoning the delay in filing the appeal. Therefore, this Court is of the considered view that the delay deserves to be condoned, however, on costs and an opportunity must be afforded to the petitioner to contest the matter on merits.

In the result, the Civil Revision Petition is allowed. The impugned order is set aside, subject to the condition that the revision petitioner/1st defendant shall deposit a sum of Rs.5,000/- (Rupees Five Thousand only), payable to the plaintiff as costs, to the credit of the interlocutory application in I.A.No.1 of 2023 in the unnumbered Appeal Suit pending on the file of the learned Principal District Judge, Salem District, within a



period of two weeks from the date of receipt of a copy of this order. No costs.

Consequently, connected CMP is closed.

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Index :yes / no

Neutral citation : yes / no

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To

1.The Principal District Judge, Salem, Salem District.



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N.SATHSIH KUMAR.J.,

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