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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2025

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

C.M.P.Nos. 22237, 26016, 26012, 26013, 26014 of 2025

IN

S.A.No. 595 of 1996

1. The Chairman
Tamil Nadu Housing Board
Anna Salai, Nandanam,
Chennai – 18
2. The Executive Engineer
and Administrative Officer
Tamil Nadu Housing Board
Vellore Housing Unit, Sathuvachari
Vellore – 632 009 and another

... Petitioners/Appellants
in all C.M.Ps.

Vs.

Thiru. Jagan Mohan (deceased)

1. Tmt. J.Vimala
W/o. Jayachandran
2. Thiru. J.Diwakar
S/o. Jagan Mohan
3. Thiru. J.Prabakar
S/o. Jagan Mohan



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4. Thiru J.Nandakumar
S/o. Jagan Mohan
5. Thiru J.Sathishkumar
S/o. Jagan Mohan
6. Tmt. J.Revathi
D/o. Jagan Mohan

All residing at 352, 17th cross phase-I,
TNHB, Sathuvachari, Vellore.

... Respondents/Proposed Respondents
in all C.M.Ps.

Prayer in C.M.P.No. 26013 of 2025: Writ Petition is filed under Section 5 of the Limitation Act, to condone the delay of 7996 days in filing the above petition to bring the legal heirs of the deceased Jagan Mohan in the above Second Appeal in S.A.No. 595 of 1996.

Prayer in C.M.P.No. 22237 of 2025: Writ Petition is filed under Section 5 of the Limitation Act, to condone the delay of 6493 days in filing the above petition for restoration of the Second Appeal in S.A.No. 595 of 1996 for non prosecution on 12.12.2006.

Prayer in C.M.P.No. 26012 of 2025: Writ Petition is filed under Order 41 Rule 19 of AS Rules, to set aside the order dated 12.12.2006 in the Second Appeal in S.A.No. 595 of 1996 and restore the same.



Prayer in C.M.P.No. 26016 of 2025: Writ Petition is filed under Order 22 Rule 4 of CPC to bring the legal heirs of the deceased Jaganmohan first respondent in the above second appeal namely, (1) Tmt. J.Vimala, W/o. Jayachandran, (2) Thiru. J.Diwakar, S/o. Jagan Mohan, (3) Thiru. J.Prabakar, S/o. Jagan Mohan (4) Thiru J.Nandakumar, S/o. Jagan Mohan, (5). Thiru J.Sathishkumar, S/o. Jagan Mohan (6). Tmt. J.Revathi, D/o. Jagan Mohan, the proposed respondent 1 to 6 in the above second appeal.

Prayer in C.M.P.No. 26014 of 2025: Writ Petition is filed under Section 22 Rule 9(2) of CPC to set aside the abatement caused due to the death of the deceased Jaganmohan, first respondent in the Second Appeal in S.A.No. 595 of 1996.

For Petitioner : Mr. M.K.Kabir
Senior Counsel
for Mr.C.Kalaichelvan

For Respondents: Mr. M.Venkata Krishnan

ORDER

These five petitions have been filed (i) to condone the delay of 7996 days in filing the petition to bring on record the legal representatives of the deceased sole respondent in the Second Appeal, (ii) to set aside the abatement



caused due to the death of the sole respondent, (iii) to bring on record the legal representatives of the deceased, (iv) to condone the delay of 6493 days in filing the application to restore the Second Appeal, which had been dismissed for default on 12.12.2006, and (v) to restore the Second Appeal.

2. Notice had been ordered in all these applications and Mr.Venkata Krishnan has entered appearance for the respondents.

3. The Second Appeal arises out of the Judgment and Decree of the Court of the Subordinate Judge at Vellore in A.S.No.115 of 1993 dated 29.09.1995, in reversing the Judgment and Decree of the learned Additional District Munsif at Vellore in O.S.No. 950 of 1987 dated 25.10.1993.

4. The Second Appeal had not been admitted by this Court. Notice regarding admission has been ordered on 21.06.1996. Pending the Appeal, the sole respondent/plaintiff, one, B.Jaganmohan passed away. Notice was given to the appellants to bring on record the legal representatives of the deceased respondent. Despite the intimation, the appellants/petitioners did not take any steps to file application to bring the legal representatives. Hence, recording the fact that the appellants did not take any steps, the appeal had been dismissed. This order was passed on 12.12.2006.



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5. Post the dismissal, the legal heirs of the decree holder / respondent filed a petition to execute the decree on 21.01.2008. In the Execution Petition, it was specifically pointed out that sole plaintiff Jaganmohan is no more, and the details of the legal heirs were also furnished. Instead of moving this Court immediately in the year 2008, the respondents decided to contest the Execution application and the Execution Petition.

6. On the application filed by the legal heirs to file the Execution Petition being allowed, the Execution petition was numbered as E.P.No. 61 of 2010 on the file of the learned District Munsif at Vellore. Even then, the appellants did not come forward with these applications. Instead, they filed a counter in E.P.No. 61 of 2010, stating that steps were being taken for the Second Appeal to be restored and heard by this Court and therefore, the Execution Petition may be dismissed. The counter was filed on 08.09.2010. Therefore, it is clear that even by September 2010, the appellants were aware that a restoration application had to be filed in order to get the Second Appeal restored. This shows that the respondents were well aware of the procedure involved and yet, they chose to remain silent.



7. Subsequent to the counter filed by the Executing Officer and Administrative Officer, Tamil Nadu Housing Board, Vellore, on 08.09.2010, another counter was filed by the second respondent in that Execution Petition. The Execution Petition was pending from 2010 (excluding the two year period from 2008 to 2010, to bring on record the legal representatives of the deceased Jaganmohan as decree holders in the execution petition), till 2016. By an order dated 07.12.2016, the Executing Court directed the Housing Board to fix the price and execute the sale deed in favour of the respondent, as stated in the appellate Court decree within a period of one month. Even then, the Housing Board did not take any steps to restore the Second Appeal or to file an application to bring on record the legal representatives of the deceased respondent.

8. Thereafter, the Executing Court was called upon by the decree holder to fix the price for the land as the Judgment debtor did not fix the price. At least at that stage, the appellants should have woken up from its Rip Van Winkle and filed the applications but did not to do so.

9. The appellants took a conscious call to participate in the execution proceedings by letting in evidence. One Mr.Ravi, the then Engineer with the



Housing Board entered the witness box and deposited evidence on 22.11.2023.

He also subjected himself to cross examination on 29.11.2023. Six months thereafter, the Executing Court, passed an order in E.P.No. 61 of 2010 directing payment of Rs.4,61,134/- by the decree holders to the credit of the Execution Petition, and on that basis to get the decree executed. This order was passed on 18.04.2024. In other words, from the date of filing of the Execution Petition, till the Execution Petition was ordered, a period of 16 years have gone by. All this while, the appellants were prosecuting the Execution Petition and it never occurred to it to file a petition to restore the Second Appeal and to bring on record the legal representatives.

10. I have already pointed out that it is not as if the appellants were not aware as to what had to be done, since the concluding portion of paragraph No.4 of the counter affidavit filed by the appellants on 08.09.2010, sets forth all the details. After the execution petition was ordered, the Housing Board preferred a revision against the said order, and this is said to be pending in C.R.P.No. 3517 of 2024.

11. It was only in October 2024, that the application to condone the delay of 6493 days, which corresponds to nearly 18 years, came to be filed on



21.10.2024. In fact, the affidavit in support of the petitions had been signed on

02.09.2024 and even then, the appellants did not present it immediately. It filed

the same Registry of this Court more than one month later.

12. In order to condone the delay under Section 5 of the Limitation Act, the *sine qua non* is the existence of a sufficient cause. The “sufficient cause” must be shown in the body of the affidavit. The affidavit filed by the appellants though running into seven pages, does not set forth the reasons as to why the delay of 18 years had occasioned. The only reason given to condone the delay is “Administrative reason” and the non-availability of the death and Legal Heir Certificates of the deceased respondent. A period of 18 years to file the application shows the lack of administration, rather than setting forth the reasons to condone the delay. The Housing Board has entirely disregarded the fact that in the Execution Petition, its own Engineer had entered the witness box and had deposed on its behalf, opposing the execution of the decree. The reason that the appellants were not aware of the details is a false one. They were put on notice and did not take steps. Hence, the appeal was dismissed. In any event, the details were made known, at least, by 2008, when they were served in the execution proceedings.



13. By virtue of the dismissal of the Second Appeal, the decree of the Lower Appellate Court stood confirmed. This has created valuable rights in favour of the respondents. One of the considerations to condone the delay is that the accrued rights of parties arising on account of lapse of time, should not be lightly interfered with. As no cause, let alone a sufficient cause has been shown by the appellants, I am persuaded to accept the arguments of Mr.M.Venkata Krishnan that this is a ploy to drag on the proceedings and thereby, denying the decree holder the fruits of his decree.

14. Mr.M.Venkata Krishnan relies upon a recent Judgment of the Supreme Court in *Shivamma (dead) by Lrs. Vs. Karnataka Housing Board and Others in Civil Appeal No.11794 of 2025 dated 12.09.2025*.

15. A perusal of the Judgment pronounced by the Hon'ble Mr.Justice J.B.Pardiwala on behalf of himself and Justice Mahadevan, reveals that a Court, before condoning the delay must come to a conclusion that the cause shown is sufficient, and should also keep in mind that however meritorious the case of the petitioner might be, it should not be a matter which would sway the decision of the Court. The learned Judge has also cautioned that a Court, while dealing with an application for condonation of delay, should loathe to look into the merits of the case.



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16. Though Mr.M.K.Kabir pleads that the appellants have an arguable case in the Second Appeal, in view of the verdict rendered by the Supreme Court in *Shivamma's* case, I am not in a position to accede to the said request.

17. The only reason, namely, administrative delay as already found, is no reason at all since the Housing Board had participated in the proceedings from 2008 till 2024. Two syllabus of “administrative delay” being quoted in the affidavit, in view of the foregoing, is not sufficient, in my view, to condone even a couple of days delay, much less a delay of 16 years. I am not inclined to accept the petition to condone the delay of 6493 days in filing the petition to restore the Second Appeal. If this is my view with respect to C.M.P.No. 22237 of 2005, I have to point out that it gets further strengthened, when it comes to C.M.P.No. 26013 of 2025.

18. I have pointed out that this Court in its order dated 12.12.2006, has recorded that the sole respondent had died, and the same was also intimated to the counsel for the appellants. This shows that even as of 2006, the Housing Board was made aware that Mr.Jaganmohan is no more, and as to who are his legal representatives. Even if I were to give a leeway to the Housing Board, at



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least by 2008, when the Execution petition came to be filed, the Housing Board

was aware of who the legal representatives of the deceased respondent are.

Even giving leeway for “administrative reason” for a further period of two years, at least by 2010, the Housing Board was aware of the legal representatives. This is because the Housing Board had filed a counter on merits, of the dispute. To plead that the reason for the delay is the exceptional case, they have on merits, as pointed out above, is no reason at all. Even in this affidavit filed seeking condonation of delay and to set aside the abatement to bring on record the Legal Heirs of the deceased sole respondent, the usual mantra of “administrative reason” has been trotted out.

19. In this Civil Miscellaneous Petition also, it was the same reason. Hence, it is clear that by September 2024, the Housing Board was aware that it was in a sticky wicket. Even then, the Housing Board did not move the application to condone the delay to set aside the abatement immediately. It was filed five months thereafter, adding to the delay that had already accumulated.

20. In view of the above discussion, I find absolutely no merits in C.M.P.No. 26013 of 2025 and C.M.P.No. 22237 of 2025 and the same are dismissed. Consequently, C.M.P.Nos. 26012, 26014 & 26016 of 2025 have also been rejected.



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13.11.2025

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Neutral Citation : Yes / No



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V. LAKSHMINARAYANAN, J.

vsg

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