



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-10-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

OSA No. 252 of 2024

AND

CMP Nos. 29257 OF 2024 & 753 of 2025

Thirunavukarasu (Deceased)

- 1.Sundari
- 2.Selvi
- 3.Amudha
- 4.Saravanan
- 5.Senthil

Appellant(s)

Vs

1.P.Usha Rani

2.George Town Co-operative Bank
Ltd.,
Door No.2/62 Krishnappa Naicken,
Agraharam Street, Chennai - 79.

Respondent(s)

PRAYER

Original Side Appeal has been filed under Order XXXVI Rule 9 of the Original



Side Rules, 1994 and Clause 15 of Letters Patent of 1865, praying to set aside the order dated 21.03.2024 in A.No.1455/2024 in Appl.No.778/2023 in EP.No.76/2022 in CS.No.611/2008 passed by the Learned Judge and allow the Appeal.

For Appellant(s): Mr.S.Balaji Raja
For Mr.R.Manickavel

For Respondent(s): Mr.S.Subbiah, Senior Counsel
For Ms.G.Sumitra For R1
No Appearance For R2

J U D G M E N T

(Judgment was delivered by V.Lakshminarayanan J.)

The present original side appeal arises against the order of the learned Single Judge in Application No.1455 of 2024 in E.P.No.76 of 2022, thereby dismissing an application to condone the delay of 65 days in preferring the appeal against the order of the learned Master. The appellants before us are the petitioners in the application.

2. The respondent had filed a suit for specific performance based on an agreement of sale dated 03.10.2007. The learned Single Judge decreed the suit. The original deceased defendant preferred an appeal. The Appellate



Court modified the decree.

3. On the basis of the modified decree passed by the Division Bench in O.S.A.No.196 of 2018 dated 27.02.2020, the decree holder levied E.P.No.76 of 2022. The decree holder filed an application seeking permission to deposit the additional amount of Rs.10 Lakhs ordered by the Division Bench. That Application came to be ordered on 11.01.2021.

4. It is the allegation of the judgment debtor that despite the order, the plaintiff/decreed holder did not comply with the terms of the decree. He also alleges that the additional conditions imposed in the decree are:

- i. Discharging the mortgage subsisting over the property, and;
 - ii. Discharging the decrees for attachment over the properties,
- were also not complied with, even after filing the Execution Petition. Subsequently, obtaining orders from the Registrar, the plaintiff deposited a sum of Rs.47,87,395/- and the mortgage in favour of the George Town Co-operative Bank and the attachment decree was also discharged.



5. When the Execution Petition was taken up, the original judgment debtor filed a petition under Section 28(1) of the Specific Relief Act, 1963. The learned Master dismissed the said petition.

6. In terms of the Original Side Rules, an appeal from an order of the learned Master to the learned Single Judge is in form of an application but is treated as an appeal. It has to be filed 7 days from the date of the order of the learned Master. In this case, the appeal was not filed within 7 days but with a delay of 65 days.

7. The reason for filing the appeal with delay is that the appellants mother, who was aged about 79 years, took ill and had to be admitted to Faith Multispeciality Hospital at Villivakkam, where she underwent surgery. She was admitted on 15.10.2023 and discharged on 28.10.2023.

8. When the application for condoning the delay came up before the learned Single Judge, he dismissed the application stating that no details of the treatment given to the appellants' mother had been furnished and where



she was taking treatment. Aggrieved by the same, the present appeal.

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9. We heard Mr.S.Balaji Raja, learned counsel for the appellants and Mr.S.Subbiah, learned Senior Counsel for the Ms.G.Sumitra, learned counsel for the 1st respondent.

10. Perusal of the affidavit shows that the appellants have pleaded that their mother was sick and was taking treatment. This, in our view, constitutes sufficient cause for the purpose of condonation of delay. The delay is also not enormous. When allegations are made that the decree holder has not complied with the terms of decree, it certainly requires a probe by the Court.

11. Mr.S.Subbiah, learned Senior Counsel, alleges that the application under Section 28(1) itself is not maintainable. This is an issue that can be agitated before the Court when it is taken up for hearing.

12. As the delay is only 65 days, we are inclined to set aside the order of the learned Single Judge dismissing the application and condone the delay,



so that the parties may agitate their rights on the merits. Accordingly, the order

dated 21.03.2024 passed in A.No.1455 of 2024 in E.P.No.76 of 2022 is set

aside and it is left open to the parties to agitate the matter on merits.

13. Accordingly, the Original Side Appeal stands allowed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

(S.M.SUBRAMANIAM J.)(V.LAKSHMINARAYANAN J.)

31-10-2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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**S.M.SUBRAMANIAM J.
AND
V.LAKSHMINARAYANAN J.**

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