



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 05.11.2025

Order pronounced on : 21.11.2025

WEB COPY

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.5369 of 2024
& CMP.No.29776 of 2024

1.Thangavel
2.Balaji
3.Prabhu

... Petitioners

Vs.

Duraisamy

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the fair and final order dated 19.04.2023 in I.A.No.1 of 2022 in I.A.No.210 of 2020 in O.S.No.264 of 2016 on the file of the Subordinate Judge, Dharapuram.

For Petitioners : Mr.K.Sudhakar

For Respondent : Ms.M.Adhishree

ORDER

The defendants in a suit for specific performance are the revision petitioners.



WEB COPY

2.The petitioners suffered an ex-parte decree in the suit and they took out an application to set aside the ex-parte decree, along with an application in I.A.No.210 of 2020 for condoning delay of 377 days in filing the petition under Order IX Rule 13 of CPC. However, the said I.A.No.210 of 2020 came to be dismissed for default on 22.12.2021. Seeking to restore the said I.A.No.210 of 2020, the petitioners filed I.A.No.1 of 2022 on 19.07.2022 under Section 5, to condone the delay of 177 days. On enquiry, the said application came to be dismissed, as against which, the present revision petition has been filed.

3.I have heard Mr.K.Sudhakar, learned counsel for the revision petitioners and Ms.M.Adhishree, for Mr.N.Manoharan, learned counsel for the respondent.

4.Mr.K.Sudhakar, learned counsel for the revision petitioner would submit that the order dismissing I.A.No.210 of 2020 on 22.12.2021 was during the COVID period and the Honourable Supreme Court, in the case of *In Re in Suo Motu Writ Petition (C) No.3 of 2020*, by order dated



10.01.2022, has exempted the period from 15.03.2020 till 28.02.2022 from limitation and in view of the exemption granted, the petitioner should not be made to suffer because of adverse orders being passed, admittedly during the lock-down period.

5.Per contra, Ms.M.Adhisree, learned counsel for the respondent would contend that the petitioners have been lethargic at every stage of the proceedings, despite the suit sale agreement having been entered into between the parties in December 2013 and the respondent having filed the suit for specific performance in August 2016, the suit came to be decreed ex-parte on 26.06.2019 and the respondent has promptly filed E.P.No.25 of 2020 and after contest, the EP was ordered and the executing Court has already executed a sale deed in favour of the respondent on 26.04.2022. She would also bring to my notice that the second execution petition was filed in E.P.No.131 of 2023 for delivery of possession and the same was also ordered on 23.01.2024 and pursuant to the same, the petitioner has already taken possession and the respondent has also mutated all the revenue records in his name and EP has also been terminated. She would therefore state that the petitioners are not entitled to any indulgence, especially when



all the proceedings have already stood concluded even as early as in January 2024. She would also place reliance on the recent decision of the Hon'ble Supreme Court in *Shivamma (Dead) by L.Rs Vs. Karnataka Housing Board and others*, reported in 2025 INSC 1104, where the Hon'ble Supreme Court has elaborately discussed the scope of enquiry under Section 5 application and the factors that would have to be gone into at such enquiry and a decision to be taken there upon. She would therefore pray for dismissal of the revision petition.

6.I have carefully considered the submissions advanced by the learned counsel on both sides. I have also gone through the impugned order dated 19.04.2023. I have also gone through the decision of the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.3 of 2020* as well as in the case of *Shivamma (Dead) by L.Rs*, referred supra.

7.It is not in dispute that the petitioners suffered an ex-parte decree in a suit for specific performance on 26.06.2019. The petitioners, along with an application for condonation of delay of 377 days, attempted to set aside the ex-parte decree by filing I.A.No.210 of 2020. The said I.A.No.210 of



2020 was also dismissed for non-prosecution on 22.12.2021. It is the case of the petitioners that their advocate, V.B.Venkateshwaran had met with an accident and he was taking treatment for almost five months in all and further the defendants were also afflicted by COVID-19 and they had to be quarantined.

8.In such circumstances, the petitioners took out I.A.No.1 of 2022 to condone the delay of 177 days in restoring I.A.No.210 of 2020. The said application was resisted by the respondent, stating that the petitioners have been totally indifferent and they filed I.A.No.210 of 2020 for condonation of delay of 377 days, only after they were served with notice in the first execution petition in E.P.No.25 of 2020, which was filed for execution of sale deed, pursuant to the decree for special performance.

9.It is noticed that the said I.A.No.210 of 2020 was also dismissed for non-prosecution on 22.12.2021 and thereafter, the court has proceeded to execute sale deed and E.P.No.25 of 2020 has also been closed. Admittedly, second execution petition has also been filed for delivery of possession and even in the said EP, an order came to be passed, pursuant to which, the



respondent has taken possession and the said execution petition has also been terminated.

WEB COPY

10.It is the primordial contention of Mr.K.Sudhakar learned counsel for the petitioners that the order dated 22.12.2021 was passed during the period exempted on account of COVID-19 and therefore, the petitioners should not suffer any adverse orders and the court should have straight away allowed the application and restored I.A.No.210 of 2020. No doubt, the Honorable Supreme Court has exempted the period from 15.03.2020 till 28.02.2022. The order, however, only excludes the said period for purposes of limitation, which may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings. The said decision does not deal with adverse orders not being passed during the said period.

11.However, in the present case, I find that the trial court has noticed the lethargy exhibited by the petitioners right through and has set out the various dates on which the petitioners have taken time and have not even attempted to serve notice in I.A.No.210 of 2020. In fact I find that I.A.No.210 of 2020 itself has been filed only on 07.08.2020, which is again



during the Covid period only, which is now sought to be taken advantage of by the petitioners. Therefore when the petitioners were not prevented from filing the application on 07.08.2020, they cannot take advantage of the period of exemption and claim that the application should not have been dismissed during the said period, namely on 22.12.2021. In effect, the petitioners are attempting to blow hot and cold.

12.Further, as pointed out by Ms.M.Adhishree, learned counsel for the respondent, rights have accrued to the respondent. Sale deed has been executed by the court and possession has also been delivered to the respondent and the respondent has also mutated all the revenue records in his name. In such circumstances, rights that have accrued legally on the respondent, is not to be lightly disturbed.

13.The Honourable Supreme Court, in the recent decision of *Shivamma's case*, cited supra, has elaborately discussed the entire gamut of case law on the point of limitation, that is Section 5 of the Limitation Act and held that once a party has lost its right to have the matter considered on merits, because of its own inaction, then it cannot be presumed to be non-



deliberate delay and in such circumstances, such party cannot be heard to plead that substantial justice deserves to be preferred as against technical considerations.

14. The Honourable Supreme Court reiterated that the consideration of a plea of condonation of delay must not start with the merits of the main matter and the court has to first ascertain the bonafides of the explanation offered by the party seeking condonation and it is only when sufficient cause is assigned by the litigant and the opposition of the other side is equally balanced that the court can even bring into aid, the merits of the matter for the purpose of condoning the delay. It has been further held that the '*sword of damocles*' cannot be kept hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the litigants, who approach the court seeking condonation of delay.

15. In the present case, as I have already discussed, when nothing prevented the petitioners from filing the application during the COVID-19 period, they cannot be permitted to contend that the application should not



have been dismissed, during COVID-19 period, especially when the trial court has noticed that despite several opportunities given to the petitioners, even notice was not attempted to be served on the respondent. In view thereof, I do not find any infirmity in the findings arrived at by the trial court, warranting interference in revision.

16.In fine, the Civil Revision Petition is dismissed. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

21.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
ata

To
The Subordinate Court, Dharapuram.



WEB COPY



P.B. BALAJI,J.

ata

Pre-delivery order made in

CRP.No.5369 of 2024

& CMP.No.29776 of 2024

21.11.2025