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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 02.06.2025

Orders Pronounced on:06.2025

CORAM

THE HONOURABLE MR JUSTICE RMT. TEEKAA RAMAN

CMP NO. 4451 of 2024

AND

SA SR NO. 94896 OF 2023

The Government Of Tamil Nadu
Rep. by its Secretary to Government, Revenue
Department, Fort St. George, Chennai-600009 and
another

Appellant(s)

Vs

S. Kannayappan (retd. Police Constable)
S/o.Sivalingam, res at NO.2/53 Thaiyur
Chengalpattu Main Road Opp. Tamil Nadu
Electricity Board, Kancheepuram District Rep. by
POA D.Peter Francis S/o.Divayanathan, No.11,
4th Gopalapuram, Chennai-600086 and 3 Others

Respondent(s)

SA SR NO. 94896 of 2023

The Government Of Tamil Nadu

Appellant(s)

Vs

S. Kannayappan

Respondent(s)

CMP NO. 4451 of 2024

For Appellant(s):

Ms.R.Anitha, Spl.G.P. And Mr.V.Ramesh, Govt Adv.

For Respondent(s):

M/s.Bharanidharan,
For R4



SA SR NO. 94896 of 2023

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For Appellant(s):

MS.R.ANITHA, SPL.G.P. AND MR.V.RAMESH,
GOVT ADV.

For Respondent(s):

M/S.BHARANIDHARAN,
FOR R4

ORDER

This petition has been filed under Section 5 of the Limitation Act to condone a delay of 4,622 days in filing the Second Appeal.

2. The brief facts of this case are as follows:-

(a) The respondent herein filed a suit in O.S. No. 243 of 2006 seeking a declaration of title and a permanent injunction. By order dated 17.09.2007, the suit was dismissed.

(b) Before the trial Court, the defendant–Government did not file a written statement and was set ex parte.

(c) Aggrieved by the said order, the unsuccessful plaintiff filed A.S. No. 54 of 2008 before the Principal District Court.

(d) Before the First Appellate Court, the respondent appears to have filed I.A. No. 352 of 2010 seeking permission to adduce evidence and to submit an additional statement and documents filed along with the said petition. By order dated 09.11.2010, the petition was allowed.



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(e) The written statement filed by the defendant–Government was

taken on file. Despite filing the written statement.

(f) In the appeal, after allowing I.A. No. 352 of 2010, the defendants were permitted to file a written statement and to adduce both oral and documentary evidence was permitted. Accordingly, D.W.1 was examined, and Exhibits B1 to B3 were marked. D.W.1 is none other than the Zonal Deputy Tahsildar. His evidence was relied upon by the learned Principal District Judge in decreeing the suit.

(g) The suit was decreed by an order dated 15.12.2010. The present appeal has been filed, and the copy application for the proposed Second Appeal was submitted only on 02.03.2023 .

(h) The present application was filed 13 years after the pronouncement of the order by the Principal District Court, Chengalpattu, specifically on 22.12.2023, resulting in a delay of 4,622 days. Accordingly, this application seeks to condone the delay in preferring the Second Appeal .

3. Ms. R. Anitha, learned Special Government Pleader, contended that they have a good case in the Second Appeal, as the classification of the Government land is a key issue. She further stated that the value of the land has increased significantly over the past 10 years. The appellant/defendant is



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also willing to pay the costs for allowing this application and therefore prayed for the application to be allowed on terms of costs.

4. The contesting respondent R4 filed a counter.

5. Mr. Bharanidharan, learned counsel appearing for R4, based on the counter affidavit, contended that there is an enormous delay of 4,622 days in preferring the appeal. He further argued that, except for Paragraphs 12, 13, and 14 in the affidavit filed in support of the petition to condone the delay, all other paragraphs deal with the merits of the case, which cannot be considered at this stage in the petition for condonation of delay.

6. He drew my attention to the Writ Petition No.34635 of 2022 filed by the respondent/plaintiff against the Registration Department of the Government of Tamil Nadu, and an appeal appears to have been filed after a delay of 7 years, which is still pending at condonation of delay itself.

7. It suffices to say that, by an order dated 24.02.2017, the Writ Petitions filed by the respondent/plaintiff in W.P. Nos. 2202 and 2207 of 2017 were allowed. The order was passed after hearing both parties.

8. Due to non-compliance with the orders passed in the above Writ Petitions, Contempt Petition Nos. 256 and 257 of 2023 were filed by the respondent/plaintiff to punish the contemnor.



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9. At this juncture, it appears that the Government Registration Department filed W.A. SR Nos. 658 and 659 of 2023 with an enormous delay of 2,223 days in preferring the Writ Appeal. The appeal was filed only after the court reprimanded the department for non-implementation of the orders passed in W.A. Nos. 2202 and 2203 of 2017. Thereafter, the filing of the Second Appeal with an extraordinary delay of 4,622 days assumes significance.

10. The learned Special Government Pleader emphasized that the classification of the land is in question .

11. On perusal of the order passed by the Appellate Court, namely the Principal District Judge, Chengalpattu, which allowed the appeal filed by the respondent/plaintiff in A.S. No. 54 of 2008 dated 15.12.2010, it is evident that the court categorically found that the predecessor-in-title and the fourth respondent herein are the lawful owners of the property by way of assignment. Accordingly, declaratory relief of title and a permanent injunction were granted.

12. By an order dated 27.03.2024, this Court recorded that respondents



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R1 to R3 had died and directed the petitioner to take steps to implead the legal representatives of the deceased. Despite the lapse of 1½ years, no steps have been taken to serve notice, and hence, the proceedings against respondents R1 to R3 stand abated.

13(i). In the decision reported in 2024 SCC OnLine SC 3612 [State of Madhya Pradesh Vs. Ramkumar Choudhary], the Hon'ble Supreme Court has held that :

Thus, it is crystal clear that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case and that, the expression ' sufficient case ' cannot be liberally interpreted, if negligence, inaction or lack of bona fides is attributed to the party.

5.1. In *Union of India v. Jahangir Byramji Jeejeebhoy (D)* through his legal heir, wherein, one of us (J.B. Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

“ 24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convicted that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that not prejudice would be caused to either side by the delay being condoned. This litigation between the parties



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started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is



hereby dismissed. There shall be no order as to costs”

Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold.

(ii) In the decision reported in Special Leave Petition (civil) No.31248

of 2018 [Pathapati Subba Reddy (Died) by L.Rs & Ors. vs.The Special

Deputy Collector (LA) has held that:

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 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



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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.

14. Hence, Hon'ble Apex Court finds that the inordinate delay has not been satisfactorily explained, and no sufficient cause has been shown. Furthermore, no plausible reason has been put forth by the State. Therefore, this Court is inclined to reject this petition at the threshold .

15. Heard both parties and perused the materials available on record.

16. Many points raised by the learned Special Government Pleader in the affidavit supporting the petition for condonation appear to be contrary to the written statement .

17. The sum and submissions of learned Special Government Pleader for petitioner had raised 3 points, viz.,

(i) Want of and lack of knowledge regarding the pendency of case.

(ii) Disputed the nature of possession of plaintiff and her legal status



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(iii) Land has become valuable land now

18. The submissions that the Department and its officers are unaware of the orders passed by the Court and however such submissions lack bona fide and are unfounded.

19. This Court finds that the said submission is misleading, as the Department and its staff filed a written statement before the Appellate Court. Furthermore, the competent person in connection is the Zonal Deputy Tahsildar, has examined himself as a witness and gave evidence pursuant to an application filed under Order 47 Rule 27 of the C.P.C. He underwent chief examination as well as cross-examination and marked documents in the appeal, namely Exhibits B1 to B3. Therefore, I find that the affidavit filed before this Court in support of this petition lacks bona fide and contains misleading statements intended solely to gain sympathy from the Court.

20. It remains to be stated that the petition is filed under Section 5 of the Limitation Act. A casual statement, unsupported by any records or material evidence, cannot constitute sufficient cause to condone the delay.

21. In the instant case, the petitioners have not shown any 'cause,' much less any 'sufficient cause,' for seeking the condonation of the enormous delay of 4,622 days in filing the Second Appeal.



22. In the absence of a plausible and acceptable explanation, delay

cannot be condoned mechanically merely because the Government is a party.

Where there is gross negligence, deliberate inaction, or lack of bona fide, liberal concession for condonation of delay cannot be granted. It has been further held that even if a case is strong on merits, it does not override the limitation aspect, which must be decided independently without delving into the merits of the case.

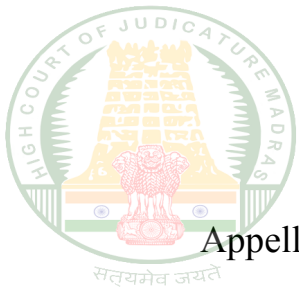
23. On point Nos.2&3, this Court is unable to appreciate the submissions of the petitioner's counsel, the Special Government Pleader, for more than two reasons.

24. On perusal of the typed set of papers, I find that a written statement has been filed by the Department. In the written statement filed by the petitioners, Paragraphs 4 and 5, which are extracted below, state as follows: :-

Para 4: The defendant further submits that the averments contained in para 6&7 of the plaint is admitted as true and correct and other averments contained in para 8 & 22 are all denied as false and incorrect.

Para 5: The defendant submitted that admittedly the plaintiffs are in possession and enjoyment of the property and the documents also stand in their name but their request for assignment could not be done due to classification of property is classified as Mayakkal Porombokku.

25. However, this Court finds that there is a clear finding before the



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Appellate Court that, even going by the evidence given by the competent witness, viz., Deputy Zonal Tahsildar (DW1) on behalf of the petitioners, the plaintiffs have been in possession since 1963, as admitted in the written statement filed before the lower appellate Court.

26. Hence, it is a matter of fact that the respondents-in-title have been in uninterrupted possession since 1963, which has also been established and admitted through the evidence given by Omprakash, D.W.1, Zonal Deputy Tahsildar, as extracted in Paragraph 13 of the First Appellate Court judgment.

27. Thus, I find that by changing their stand before different forums—namely, the defendant did not file a written statement before the Trial Court but chose to file a written statement and lead oral and documentary evidence before the lower Appellate Court. Dehors such oral and documentary evidence and pleadings, a different version has been projected in the affidavit filed in this C.M.P.

28. No person is entitled to take dynamically different positions in each proceeding at different levels. The stand taken by the petitioner herein in the written statement filed in A.S. No. 54 of 2008 was that the respondent/plaintiff is in possession of the property. However, in the present



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affidavit, they have adopted a different stance. By changing their stand, the petitioner herein stands exposed. Moreover, nowhere in the written statement filed before the lower Appellate Court did the petitioner allege that the respondent had encroached upon or attempted to deprive them of the available land, which also assumes significance.

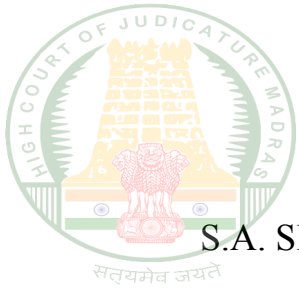
29. As stated supra, except for Paragraphs 12, 13, and 14, all other averments made in the affidavit pertain only to the merits of the case, which appear to be a different stand from that taken in the written statement.

30(i). On perusal of judgment of Civil Court in A.S.No.54 of 2008 and orders passed by this Court in W.P.Nos.2302 and 2303 of 2017 and Contempt Petition Nos.256 and 257 of 2023, it appears that the only sin committed by the respondent/plaintiff is that they have filed contempt petition against the petitioner-officials.

(ii) The petitioners did not explain the enormous delay of 4622 days in filing the above appeal with any legally acceptable material evidence leave alone giving reasons for each and every day of delay.

31. I find that there is no cause, much less any sufficient cause, to condone the delay; hence, I hold that this case lacks merit .

32. Accordingly, this *Civil Miscellaneous Petition is dismissed*, and



S.A. SR No. 94896 of 2023 is rejected at the S.R. stage.

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CMP NO. 4451 of 2024

To

1. S. Kannayappan (retd. Police Constable)
S/o.Sivalingam, res at NO.2/53 Thaiyur Chengalpattu
Main Road Opp. Tamil Nadu Electricity Board,
Kancheepuram District Rep. by POA D.Peter Francis
S/o.Divayanathan, No.11, 4th Gopalapuram, Chennai-
600086

2. S.K.Kumar

S/o.S.Kannayappan, res at NO.2/53 Thaiyur Chengalpattu Main Road Opp.
Tamil Nadu Electricity Board, Kancheepuram District Rep. by POA D.Peter
Francis S/o.Divayanathan, No.11, 4th Gopalapuram, Chennai-600086

3. Selvamani (partially Blind)

D/o.Kannayappan, res at NO.2/53 Thaiyur Chengalpattu Main Road Opp.
Tamil Nadu Electricity Board, Kancheepuram District Rep. by POA D.Peter
Francis S/o.Divayanathan, No.11, 4th Gopalapuram, Chennai-600086

4. P.Antony Josephine

W/o.Wilson S.Cristian, No.11, 4th Gopalapuram, Chennai-600086

SA SR NO. 94896 of 2023

1. S. Kannayappan

RMT.TEEKAA RAMAN,J.,

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