



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 28.10.2025

Order pronounced on : 14.11.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.4721 of 2025

& CMP.No.23852 of 2025

K.Ratchagaraj (Deceased)

K.Isaivani (Deceased)

1.K.Arputharaj

K.Velankanni (Deceased)

2.K.Selvi

3.Punitha

4.Kumar

... Petitioners

Vs.

Guild of Service (Central)

Rep. by its Honorary Secretary

Mr.A.Bharathan,

No.28, Casa Major Road,

Egmore, Chennai – 600 008.

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 08.09.2025 passed in I.A.No.1 of 2024 in O.S.No.10806 of 2010 by the V Additional District Judge, City Civil Court, Chennai.



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For Petitioners : Mr.Sandeep S.Shah
for Mr.S.John Josh

For Respondent : Mr.V.Raghavachari
Senior Counsel
for M/s.S.Vinodha

ORDER

The defendants, whose attempt to have the delay of 2002 days condoned in filing their application to set aside the ex-parte decree, are the revision petitioners.

2.I have heard Mr.Sandeep S.Shah for Mr.S.John Josh, learned counsel for the petitioners and Mr.V.Raghavachari, learned Senior Counsel for M/s.S.Vinodha, learned counsel for the respondent.

3.The learned counsel for the petitioner, Mr.Sandeep S.Shah, would submit that the suit has been filed for ejectment, alleging that the petitioners are trespassers. He further contends that there is no relief for declaration sought for by the respondent and that the petitioners' possession has been perfected by adverse possession. A counter claim was also filed along with

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the written statement. In the suit, the petitioners were however set ex-parte and an ex-parte decree came to be passed, contending that three members of the family of the petitioners, who were attending to the proceedings had died. The petitioners were not in a position to effectively appear and contest the suit and also prosecute the counter claim. Mr.Sandeep S.Shah, learned counsel for the petitioners would submit that as soon as they received notice, they appeared in the execution petition in 2021 and also filed Section 5 petition.

4.However, the petitioners blamed their advocate for not advising them properly which has resulted in the delay of 2002 days. Mr.Sandeep S.Shah would also state that the judgment that has been passed in the suit does not conform to Order XX Rule 4 CPC and there is also no issue framed with regard to the counter claim filed by the petitioners. Therefore, it is the contention of Mr.Sandeep S.Shah that the judgment is a nullity in the eye of law and in such circumstances, it would be just and proper to afford an opportunity to the petitioners to contest the suit and also prosecute the counter claim in accordance with law.



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5.Mr.Sandeep S.Shah would further state that the petitioners ought to have established the title and their failure to seek the relief of declaration of title was also fatal. Pointing out to the findings of the trial Court, learned counsel would submit that the trial Court has erroneously given a finding that Patta evidences title of the respondent/plaintiff. In support of his contention, he also relies on the decisions of the Honourable Supreme Court in *the Collector, Land Acquisition, Anantrag and another Vs. Mst.Katiji and others*, reported in 1987 2 SCC 107, order of this Court in *P.Deekaraman (Died) through LRs Vs. Kodhai and others*, in CRP.No.637 of 2025 dated 19.08.2025, *Chandra and others Vs. M.Devendran*, reported in 2019 (4) CTC 61 and *Vedabai and Vaijayanatabai Baburao Patil Vs. Shantaram Baburao Patil*, reported in 2001 (9) SCC 106.

6.Per contra, Mr.V.Raghavachari, learned Senior Counsel appearing for the respondent would submit that the petitioners are legal representatives of a former employee of the respondent, Guild of Service, who was permitted to occupy a portion of the suit property, in lieu of her then



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services being rendered to the respondent/plaintiff. Despite the death of the original employee, under whom the petitioners claim, the petitioners are squatting over the property and have successfully prevented the respondent from enjoying the property which rightfully belongs to them. He would further state that, excepting for blaming the counsel, there is absolutely no explanation for the delay of more than three years. In support of his contentions, learned Senior Counsel, Mr.V.Raghavachari, would also rely on the decision of the Honourable Supreme Court in *Maria Margarida Sequeira Fernandes and others Vs. Erasmo Jack de Sequeira (Dead) through LRs*, reported in (2012) 5 SCC 370, *D.V.Venkatesan and another Vs. N.R.Subramanian and another* in CRP.No.52 of 2025 dated 31.01.2025, *Thirunagalingam Vs. Lingeswaran and another*, in SLP(c).No.17575 of 2023 dated 13.05.2025 and a recent pronouncement of the Honourable Supreme Court in *Shivamma (Dead) by LRs Vs. Karnataka Housing Board and others*, in Civil Appeal.No.11794 of 2025 dated 12.09.2025. Learned Senior Counsel would therefore submit that there is absolutely no infirmity in the order of the trial Court, dismissing the application for condonation of delay of 2002 days, warranting interference in revision.



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7.I have carefully considered the submissions advanced on either side. I have also gone through the material records placed before me, by way of typed set of papers, as well as the decisions on which reliance has been placed on by the counsel for the petitioners as well as the learned Senior Counsel appearing for the respondent.

8.The respondent herein filed O.S.No.10806 of 2010, for recovery of possession from the revision petitioners, who were arrayed as the defendants in the suit. The defendants entered appearance and also filed their written statement, along with a counter claim, contending that they have perfected title, by adverse possession and consequently, their possession should not be disturbed by the plaintiffs. However when the matter went for trial, the petitioners were set ex-parte and an ex-parte decree came to be passed. The suit was originally filed before this Court in C.S.No.242 of 2009 and thereafter, transferred, on account of enhancement of pecuniary jurisdiction of the city civil courts and renumbered as O.S.No.10806 of 2010 and posted before the V Additional Judge. The



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petitioners did not appear and they were set ex-parte and the suit was decreed and the counter claim filed by the revision petitioners was dismissed.

9.It is the case of the petitioners that they are illiterate and they are all legal heirs of Rajamani Ammal, who has been permitted to reside in the suit property, right from the late 1970's, considering her employment in the plaintiff's school. According to the petitioners, they have all along resided with their mother, Rajamani Ammal, until her demise in year 2004 and they have perfected their title by adverse possession and therefore, they cannot be evicted, as sought for by the respondent/plaintiff. In an attempt to explain the delay of 2002 days, the petitioners have stated that one of them is suffering from severe diabetics for the last 6 years and the elder brother K.Ratchagaraj died in the year 2004 and after him, there was no breadwinner and the petitioners were all illiterate. The other brother Velayudham, who was subsequently contesting the matter also died in the year 2015 and there was no male member in the family to continue the legal proceedings and defend the interest of the petitioners.



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10.The Covid pandemic period is also sought to be taken advantage of by the petitioners. The deponent, one of the legal heirs of Rajamani Ammal has stated that she has voluntarily taken the responsibilities on her shoulders and she was also suffering from jaundice in the year 2022 and hence, the suit could not be effectively defended. The counsel who appeared for the petitioners is also blamed in the affidavit for not following up the matter, despite written statement and counter claim having been filed and only upon getting notice in the execution petition, the petitioners, after engaging new counsel, came to know about the ex-parte decree first.

11.The application was strongly resisted by the respondent/plaintiff, contending that the petitioners are rank trespassers who are not entitled to stay in the suit property, pursuant to the demise of Rajamani Ammal, who alone was permitted to reside on account of her services rendered to the respondent/plaintiff. The respondent also contended that the petitioners are only attempting to drag and protract the proceedings to continue to squat on the property, without any payment, for unlimited period, taking advantage of the original permission being gratuitous.



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12. On enquiry, the trial Court found that the petition to condone delay, along with the application to set aside the ex-parte decree was filed only on 20.06.2024 and in the execution petition in E.P.No.389 of 2021, the petitioners had been duly served with notice and they had also engaged a counsel who entered appearance on 25.03.2021 for some of the petitioners and on 05.07.2022, one of the petitioners engaged a different counsel and thereafter, they have been repeatedly taking time for filing counter. Even in the execution petition, as found by the trial Court, the Petitioners were set ex-parte and delivery was ordered on 12.03.2024.

13. The trial Court therefore, found that the petitioners have not shown sufficient cause and the reasons assigned in the affidavit were not genuine or bonafide, and proceeded to dismiss the application for condonation of delay. According to Mr. Sandeep S. Shah, counsel for the petitioners, the petitioners are illiterate and they were not effectively represented by their earlier advocate, who was engaged by them for the suit. It is also his case that after receipt of notice in EP alone, the petitioners



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came to know about the ex-parte decree. However, as found by the trial Court that the petitioners were served with notice in the execution petition. In fact, three of them entered appearance even as early as on 25.03.2021 and one another petitioner entered appearance on 05.07.2022 through a different counsel. Right from 25.03.2021 and again from 05.07.2022, the petitioners have only been seeking adjournments to file counter and ultimately, they have been set ex-parte on 06.03.2024 and delivery has also been ordered on 12.03.2024. The application to condone delay however has been filed only on 20.06.2024. There is absolutely no explanation with regard to the delay, at least from 25.03.2021, till 20.06.2024, when the petitioners admittedly had knowledge about the ex-parte decree and they also had legal assistance.

14. In fact, nowadays, it has become very convenient for litigants to blame the counsel for non-appearance or for not informing them about the progress of the suit. The Courts have repeatedly held that the foremost duty is cast upon the litigant to follow up his case diligently. After all, it is the case of the litigant and not the lawyer and the lawyer only acts as an agent for the litigant, to render professional assistance in the suit or the litigation



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concerned. Therefore, to unilaterally throw the blame on the advocate and attempt to get delay condoned is certainly not desirable healthy. Even assuming the petitioners were let down by their earlier advocate, even then, when they received notice in the execution petition, at least, if they were really diligent in defending the suit, they ought to have taken immediate steps to set aside the ex-parte decree.

15.As rightly contended by Mr.V.Raghavachari, learned Senior Counsel, the delay of 3 years and 3 months between 25.03.2021 and 20.06.2024 remains totally unexplained. Equally, the explanation offered for the earlier period is also highly unsatisfactory. The petitioners have entered appearance even before this Court and their counsel has even advised them to file a counter claim and contest the suit on the ground that there is no relief for declaration prayed for by the plaintiff. In such circumstances, it is unfortunate for the petitioners to make allegations against the counsel, that too, behind the back of the counsel who has no opportunity to defend himself. When such unsavoury allegations are made and blame is thrown on the counsel in subsequent proceedings, such



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unilateral assertion made by litigants will have to be viewed very carefully and should not be accepted by Courts as gospel truth. I do not find any infirmity in the findings arrived at by the trial Court, dismissing the application for condemnation of delay.

16. Coming to the decisions that have been relied on by the parties, in *the Collector, Land Acquisition's case*, cited supra, the Hon'ble Supreme Court held that ordinarily a litigant does not stand to benefit by causing delay and therefore, a pedantic approach should not be made and non-deliberate delay should be liberally considered and condoned.

17. In *P.Deekaraman's case*, cited supra, this Court held that length of delay is not relevant, but the Court has to only see whether reasons assigned for the delay are sufficient or not.

18. In *Chandra's case*, cited supra, this Court condoned the delay of 959 days. However, this Court found that summons had not been served on the defendants and the suit itself had abated and was dismissed earlier. In such circumstances, this Court condoned the delay.



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19. In *Vedabai's case*, cited supra, the Hon'ble Supreme Court held that the Court should adopt a pragmatic approach while exercising discretion under Section 5 of the Act and a distinction should be made between a case where delay is inordinate and a case where the delay is of a few days. In the case before the Hon'ble Supreme Court is only 7 days. Therefore, I do not see how this decision can be pressed into service.

20. Coming to the decisions that have been relied on by Mr. V. Raghavachari, learned Senior Counsel, in *Maria Margarida's case*, cited supra, the Hon'ble Supreme Court held that when a person is in gratuitous or permissive possession and in the case before the Hon'ble Supreme Court, a caretaker, the Hon'ble Supreme Court held that when the possession of such a caretaker or a watchman or a servant who is allowed to stay in the premises gratuitously, then his LR's have no right to stay in the property.



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21.In *D.V.Venkatesan's case*, cited supra, this Court refused to condone the delay of 1158 days and held that when the petitioners had admittedly received notice in the execution proceedings, they did not file the application to set aside the ex-parte decree immediately, but filed the same after two years. The ratio in the said case would in fact apply to the facts of the present case as well.

22.In *Thirunagalingam's case*, cited supra, the Hon'ble Supreme Court held that delay should not be condoned merely as an act of generosity and the pursuit of substantial justice must not come at the cost of passing prejudice to the opposing party and if the petitioners failed to demonstrate reasonable grounds of delay, then the crucial requirement to condone the delay would only remain unmet.

23.In a recent and elaborate pronouncement in *Shivamma's case*, cited supra, the Hon'ble Supreme Court, after discussing the entire gamete of case law on the subject, held that the petitioner who seeks condonation of delay and approaches the Court long after lapse of time prescribed under the



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provisions of law, then such litigant cannot turn around and claim that no prejudice would be caused by the delay being condoned. The Hon'ble Supreme Court further held that the petitioner who seeks condonation of delay cannot fix his own period of limitation and claim that he is entitled to a presumption that the delay is not deliberate and therefore, substantial justice deserves to be preferred against technical considerations. It is further held that at the stage of considering the plea of condonation of delay, the Court should not start with the merits of the main matter, but first ascertain the bonafides of the explanation offered by the parties seeking condonation and only if sufficient cause is assigned by the litigant and the opposition of the other side is equally balance, then alone the Court may consider the merits of the matter, for the purposes of condoning the delay. The said decision also squarely applies in all force to the facts of the present case. The petitioners have miserably failed in establishing sufficient cause for condonation of inordinate delay of 2002 days. The trial Court has rightly dismissed the application and the same does not warrant interference in revision.



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

14.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The V Additional District Judge, City Civil Court, Chennai.



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P.B. BALAJI,J.

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Pre-delivery order made in
CRP.No.4721 of 2025
& CMP.No.23852 of 2025

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