



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on : 12.11.2025

Order pronounced on : 28.11.2025

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THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.929 of 2025
& CMP.No.5362 of 2025

Amirthavalli (Died)

1.M.Raghuveeran
2.M.Shanmugasundaram

... Petitioners

Vs.

K.Athmanathan

... Respondent

Prayer: Civil Revision Petition filed under Section 115 of CPC, to set aside the order and the decretal order passed in I.A.No.1 of 2024 in O.S.No.231 of 2002 dated 18.09.2024 by the learned Subordinate Judge, Alandur.

For Petitioners : Mr.A.V.Arun
for Mr.R.Vinoth Kumar

For Respondent : Mr.L.Ramkumar

ORDER

The defendants are the revision petitioners. Their application to



condone the delay of 276 days in filing the petition to restore I.A.No.226 of 2021, which was in turn filed to condone delay of 2718 days in filing the application to bring on the record the legal representatives in O.S.No.231 of 2002 having been dismissed, are the revision petitioners.

2.I have heard Mr.A.V.Arun, for Mr.R.Vinoth Kumar, learned counsel for the revision petitioners-defendants and Mr.L.Ramkumar, learned counsel for the respondent-plaintiff.

3.The respondent-plaintiff had filed a suit for specific performance of an agreement of sale. The suit was filed against Amirthavalli, who had entered into the agreement of sale with the plaintiff. The suit was decreed on 17-03-2004. The said Amirthavalli died on 17-04-2011. After the decree, the respondent had filed the EP and the execution petition also proceeded to the stage of filing of draft sale deed and calling upon the plaintiff to deposit the requisite stamp paper. The said order was challenged by the petitioners in CRP.No.1144 of 2019. However, the said revision was dismissed by the Court on 24-04-2019. While so, in the application in I.A.No.226 of 2021 for



condonation of delay was filed.

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4.It is the case of the petitioners that on 29-09-2023, when the condone delay application was dismissed, they could not appear though they were regularly appearing in the EP. Hence, the delay of 276 days was sought to be condoned. The application was strongly resisted by the respondent-plaintiff, stating that the suit was decreed way back in 2004 and the execution petition has also been filed. The plaintiff, who is aged 82 years, has been patiently waiting right from 1999 to get the property, which he has purchased from late Amirthavalli and he has also deposited the stamp paper value on 18-01-2019. The application is only an attempt to protract the proceedings and therefore prayed for dismissal.

5.The trial Court finding that even though it is the contention of the petitioners that their mother died on 07-04-2011, after the passing of the decree on 07-03-2004, when E.P.No.22 of 2016 was filed by the respondent to execute the decree, the petitioners entered appearance and also engaged services of a counsel. However, they remained ex-parte even in the



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execution petition and orders were passed on 18-01-2019. The said order was challenged in CRP.No.1144 of 2019 and this Court dismissed the revision petition by order dated 24-04-2019, confirming the order of the executing Court dated 18-01-2019.

6. Admittedly, the petitioners had entered appearance in the EP proceedings even in 2016 and therefore, they cannot claim that they had no knowledge of the ex-parte decree in the suit for specific performance. Despite the same, the petitioners took their own sweet time to file the application in I.A.No.226 of 2021, seeking condonation of delay of 2718 days in bringing themselves on record in the place of Amirthavalli. The said application was also not prosecuted diligently and the same came to be dismissed. In order to restore the said application alone, the subsequent I.A.No.1 of 2024 was filed. Even this application was not filed in time, but filed with an application to condone delay of 276 days. It is thus clear that the intention of the petitioners is only to protract and delay the proceedings.

7. The Hon'ble Supreme Court, as well as this Court have repeatedly



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held that there is no substitute for sufficient cause being shown before becoming entitled to an order of condonation of delay. The petitioners have not been diligent in prosecuting their applications at every stage of the proceedings. Even assuming they were not aware of the suit filed against their mother Amirthavalli, at least in 2016, when they came to know from the execution proceedings, they ought to have immediately taken steps to set aside the ex-parte decree and to bring themselves on record as defendants. No steps were taken until 2021, when I.A.No.226 of 2021 was filed.

8. Even in the said application, the only reason given is that though the deponent of the affidavit, one of the petitioners was regularly appearing in the EP proceedings, he was not able to appear on 29-09-2023, on which date, I.A.No.226 of 2021 was dismissed for non-prosecution. There is absolutely no acceptable reason set out as to why there has been a delay, especially when the petitioners themselves claim that they have been regularly appearing in the Court.

9. Even assuming that they were not able to appear on 29-09-2023, the



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delay of 276 days stands wholly unexplained. The affidavit merely revolves around the earlier proceedings and does not address the cause for delay of 276 days. The petitioners cannot fix their own timelines for the purpose of limitation. Having come to know that there has been a decree for specific performance, even in 2016, the petitioners never chose to have the decree set aside until 2021, when alone they filed an application to bring themselves on record. Even the said application was dismissed for non-prosecution and despite filing I.A.No.1 of 2024 to restore the said I.A.No.226 of 2021, even I.A.No.1 of 2024 was allowed to be dismissed for non prosecution.

10.The trial Court rightly finding that the petitioners have not been vigilant cannot expect the law to protect them, dismissed the application to condone the delay. I am unable to accept the argument of the learned counsel for the petitioners that the delay is only 276 days. The length of delay is immaterial and the only *sine qua non* for getting the delay condoned is for the applicant seeking condonation to establish that there has been sufficient cause for the delay. As already discussed, not a single reason



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has been assigned for the period of 276 days. Further, the said application in I.A.No.1 of 2024 itself has been filed to set aside the dismissal of an application to condone the delay of 2718 days in filing the petition to bring on record the legal representatives of the defendants in the suit.

11.As held by the Hon'ble Supreme Court, the *Damocles' sword* cannot be kept hanging over the party, who has succeeded in the litigation. Here, the suit was decreed way back in the year 2004. I do not find any perversity or infirmity in the findings arrived at by the trial Court dismissing the application.

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

28.11.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Subordinate Judge, Alandur.

7/8



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P.B. BALAJI,J.

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Pre-delivery order made in
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