



C.M.P.No.247 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 03.03.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.M.P.No.247 of 2025
in A.S.SR.No.172316 of 2024

1. Narayanaswamy Konar
2. Senthilkumar

... Petitioners/Appellants

-VS-

Soundarapandian
Rep. by his Power Agent,
R.Kabir Doss,
S/o.D.Ramasamy,
No.5, Mudaliar Thoppu,
Vedaranyam Taluk,
Nagapattinam District.

... Respondent/Respondent

Prayer in CMP: Petition is filed under Section 5 of the Limitation Act r/w Order 41 Rule 3-A of CPC, seeking to condone the delay of 2616 days in preferring the Regular Appeal.

Prayer in AS: Appeal Suit is filed under Section 96 of CPC to set aside the judgment and decree passed in O.S.No.18 of 2015 dated 04.07.2017 on the file of the Court of District Judge, Nagapattinam and dismiss the said suit by allowing the appeal.

For Petitioners : Mr.A.Muthukumar
For Respondent : Mr.E.Om Prakash
Senior Counsel
For Mr.G.Veerapathiran



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ORDER

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This Civil Miscellaneous Petition has been filed to condone the delay of 2616 days in filing appeal, challenging the exparte decree and judgment passed on 04.07.2017.

2. According to the petitioners, the respondent has filed a suit for specific performance on the basis of an agreement dated 08.06.2008, which came to be decreed exparte on 04.07.2017. It is averred that the suit itself is barred by time and the Trial Court has not considered the same at the time of passing the exparte decree. It is the case of the petitioners that the exparte decree came to be passed for non filing of written statement. Therefore, the petitioners filed two applications in I.A.Nos.2 and 3 of 2022 to set aside the exparte decree and to condone the delay of 1676 days. Both applications were dismissed, as against which refusing to condone the delay, C.R.P.No.3892 of 2022 was filed before this Court. The said petition was also dismissed by this Court on 29.11.2022, thereby confirming the order of dismissal passed by the Trial Court. Subsequently, C.M.A.No.2596 of 2022 was filed before this Court against I.A.No.3 of 2022, which was



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dismissed by this Court on 02.04.2024. Further, as against the dismissal of Civil Revision Petition, the petitioners also filed SLP (Civil) Diary No.22411 of 2024 and the Apex Court dismissed the case on 23.08.2024.

3. It is further case of the petitioners that the dismissal of application to set aside the exparte decree does not bar to file an appeal, as the petitioners have been prosecuting the application to condone the delay till 23.08.2024 and thereafter, filed the appeal. The contention of the petitioners is that the 2nd petitioner met with an accident on 20.11.2023 and suffered injuries in his back bone and therefore, he could not do normal work for nearly a year. That apart, the 1st petitioner is also not keeping good health and his other son is suffering from cancer. Hence, there is a delay of 2616 days in preferring the appeal and the petitioners seek to condone the delay.

4. A counter affidavit has been filed by the respondent, disputing the reasons. According to the respondent, the petition lacks bonafide and there is no proper reason assigned to condone such huge



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delay. The suit has been filed for specific performance. Even though the suit

was posed on 28.09.2015 and 29.09.2015, the defendants did not appear

before the Trial Court and therefore, they were set exparte and the suit was

posted for exparte evidence on 13.10.2015. On the said date, the defendants

filed applications to set aside the exparte order, which came to be allowed

and they were given a chance to file written statement. However, no written

statement has been filed till 14.12.2015 and therefore, once again they were

set exparte and exparte decree was passed on 04.07.2017. It is stated in the

counter affidavit that thereafter, an Execution Petition has been filed in the

year 2020 itself and a sale deed has been executed and stamp papers have

also been purchased and the matter is now posted for registering the sale

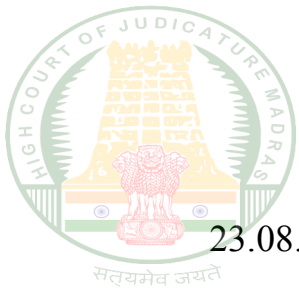
deed. It is further stated that the petitioners/defendants have been filing

applications one after the other to stall the execution process since 2020 and

the CMA filed against the dismissal order was also dismissed by this Court.

Hence, it is prayed that such a huge delay cannot be condoned at this stage.

5. Learned counsel for the petitioners would mainly submit that the petitioners have been prosecuting the application to condone the delay in filing to set aside the exparte decree. SLP was dismissed only on



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23.08.2024 and the petitioners have been bonafidely prosecuting the application upto Supreme Court to set aside the exparte decree. However, the condone delay application has been dismissed.

6. According to the learned counsel for the petitioners, the sale agreement was entered into on 08.06.2008 and the suit has been filed belatedly and therefore, the petitioners have to be given a chance to contest the matter. Further, it is submitted that immediately after the dismissal of the Civil Revision Petition, steps have been taken to obtain a certified copy of the decree and judgment and filed the present petition. It is further submitted that the 2nd petitioner has met with an accident in the year 2023 and other son of the 1st petitioner is suffering from cancer. All these facts have to be taken into consideration to condone the delay. In order to substantiate his argument, he has referred to the judgment of the Supreme Court in the case of Collector, Land Acquisition, Anantnag and another. vs. Mst.Katiji and others, reported in AIR 1987 SC 1353.



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7. Learned Senior Counsel appearing for the respondent

contended that earlier reasons assigned to condone the delay to set aside the exparte decree have not been accepted by the Court, including this Court and Apex Court. Thereafter, the petitioners have filed the application to condone the huge delay with the same reasons, which cannot be permitted in the eye of law. The petitioners were set exparte in the year 2015 and though an opportunity was given to them to participate in the trial by setting aside the earlier exparte order, the petitioners did not file any written statement even after repeated adjournments and therefore, the exparte order was passed in the year 2017. He further contended that knowing very well about these proceedings, the petitioners have not taken any steps and filed the petition seeking to condone the delay of 1676 days in the earlier round of litigation, which already attained finality. Now, on the same reasons, the petitioners cannot seek to condone such a huge delay in filing a petition to set aside the exparte decree. In support of his submission, he has relied upon a judgment of the Apex Court in the case of **Pathapati Subba Reddy (Died) by LRs and others vs. Special Deputy Collector (LA)**, reported in **2024 SCC OnLine SC 513**.



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8. I have perused the material documents available on record.

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9. Absolutely, the dismissal of earlier application to condone the delay in seeking to set aside the exparte decree will not be a bar for the petitioners to file a statutory appeal. But, at the same time, reasons assigned in the petition have already been negated by this Court and went upto Supreme Court. Once again seeking to condone the delay on the same ground with some few additional facts cannot be a ground to condone such a huge delay. On perusal of the entire petition, it is seen that the petitioners, rather giving an explanation for such a huge day, projected the merits of the case, as if the suit has to be dismissed in its entirety. At the stage of considering the application to condone the huge delay, the Court cannot go into the merits.

10. Be that as it may, while disposing the application for condonation of delay, the conduct of the parties assumes significance. It is not the case of the petitioners that they were not aware of the proceedings from the inception and they have been taken by surprise. It is relevant to



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note that the suit has been laid for specific performance of a sale agreement dated 08.06.2008. Though a time frame has been fixed in the agreement, the suit proceeded as if there was an extension of time after receipt of further advance. As the party did not appear before the Registering Authority, the suit has been filed. The Trial Court has in fact passed a detailed judgment even after framing issues. Therefore, it cannot be said that the exparte decree has been passed without considering any merits at all.

11. Coming to the conduct aspect, it is not the first time that the petitioners were set exparte and the decree came to be passed. When the matter was posted on 28.09.2015, they were set exparte and the matter was posted on 07.10.2015 for exparte evidence and again stood adjourned to 13.10.2015. Two different applications were filed for setting aside the exparte decree and those two applications were allowed and the matter has been posted for filing written statement. Thereafter, several adjournments have been granted till 14.12.2015. As the written statement has not been filed, finally, the petitioners were set exparte and exparte evidence has been taken and thereafter, judgment was delivered on 04.07.2017.



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12. It is relevant to note that on 14.12.2015, the petitioners were set exparte and thereafter, the judgment was pronounced on 04.07.2017. Till such time, there was no attempt whatsoever made to set aside the order. When the Execution Petition was filed, the petitioners appeared on 07.11.2020. Further, in the earlier round of litigation, an application was filed to condone the delay of 1676 days in filing an application to set aside the exparte decree. The said application has been dismissed by the Trial Court, which has been confirmed by this Court in C.R.P.No.3892 of 2022. Ultimately, SLP preferred against the order passed in the revision petition has also been dismissed on 23.08.2024. After dismissal of the SLP, now this petition has been filed on the ground that the 2nd petitioner has met with an accident in the year 2023 and he was not able to move. Further, another son suffered cancer.

13. It is further relevant to note that when the petitioners were prosecuting previous applications, the same reason has been assigned. Merely because one of the petitioners met with an accident, it cannot be said that no one has followed up the case properly. Even after appearance before



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the Execution Court, no attempt whatsoever has been made to file an appeal.

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Since the parties were very casual, now it cannot be canvassed before this Court that the suit has to be decided on merits. Of course, it is well settled that adjudication should be based on merits, but at the same time, the sufficient cause employed under Section 5 of the Limitation Act should be established before the Court. The reasons assigned for exercise of discretion should be plausible and bonafide.

14. In the recent judgment, the Supreme Court in the case of *Pathapati Subba Reddy (Died) by LRs and others vs. Special Deputy Collector (LA)*, held as follows:

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;



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(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 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.

15. When the party was all along aware of the proceedings and have casually come to the Court after more than six years of the judgment, which almost reached finality, the discretion cannot be exercised as a



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matter of right merely on the ground that someone is not well. The Trial Court has considered the entire aspects of the matter and framed issues and passed the decree.

16. In such view of the matter, finding no merits in the petition to condone the delay, this instant Civil Miscellaneous Petition is dismissed. Consequently, the Appeal Suit, which is in SR stage is also rejected. No costs.

03.03.2025

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To:

1. The District Judge,
Nagapattinam.
2. The Section Officer,
V.R.Section,
High Court,
Madras.

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