



CMP(MD) NO. 2132 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24-06-2025

CORAM

THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

CMP(MD) NO. 2132 of 2025

IN

SA(MD) SR NO. 1346 OF 2025

Vettumperumal (Died)

Kalanjiam (Died)

1. Annathai

2. Krishnaveni

3. Srivaikuntam

4. Sermakani

5. Annalakshmi

..Petitioners

Vs

Sankara Nainar (Died)

1. Venkatesh

S/o. Late. Sankara Nainar,

Vadakku Vallioor Yadavar South Street,

Vadakku Vallioor Village,

Radhapuram Taluk,

Tirunelveli District.

2. Thanushkodidurai

S/o. Late. Sankara Nainar,

Vadaku Vallioor Yadavar South Street,

Vadakku Vallioor Village,

Radhapuram Taluk,

Tirunelveli District.



3. Reshikesavan,
S/o. Late. Vettumperumal,
Nambianvilai,
Vadakku Vallioor Village,
Radhapuram Taluk,
Tirunelveli District.

.. Respondents

PRAYER in CMP(MD)No.2132 of 2025 : This Petition filed under Order 41 Rule 3A C.P.C, to condone the delay of 950 days in filing SA(MD)No.SR1346 of 2025 on the file of this Court.

PRAYER in SA(MD)No.SR1346 of 2025 : This Appeal filed under Section 100 C.P.C, against the judgment and decree passed in A.S.No.28 of 2015 on the file of the Sub Court, Vallioor, dated 28.02.2022 confirming the judgment and decree passed in O.S.No.130 of 2007 on the file of the Additional District Munsif Court, Vallioor, dated 24.11.2014.

For Petitioner : A.Thirukumaran

For Respondents : Mr. R.T.Arivukumar for R1 & 2
: R3 - Tapal Returned - Left India

ORDER

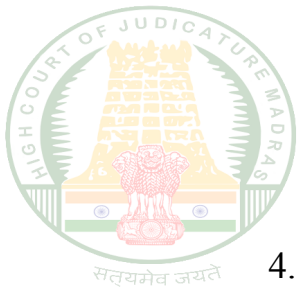
This Petition is filed to condone the delay of 950 days in filing S.A. (MD)No.SR1346 of 2025.

2. Heard the learned counsel for the petitioners and the learned counsel for the respondents 1 and 2.



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3. The five petitioners herein had come up with the petition, seeking to condone the huge delay of 950 days in filing the appeal. It is seen from the records that originally the plaintiff has filed the suit in O.S.130 of 2007, seeking for declaration and mandatory injunction, which came to the decreed on 24.11.2014. The appeal preferred thereon by the petitioners in A.S.No.28 of 2015 came to be dismissed on 28.02.2022. Even though the declaration was issued in favour of the plaintiff and the mandatory injunction was issued as against the defendants / respondents herein and they were aware that the decree is operating against them, still the petitioners were not diligent in prosecuting the appeal, further, an appeal by preferring second appeal in time. The plaintiff, who had filed the suit in the year 2007 and obtained a decree in his favour, which was confirmed by the lower Appellate Court, had also filed an Execution Petition in E.P.No.4 of 2024, and it is submitted that notice has been served to the petitioners on 30.08.2024. Only thereafter, now the petitioners have come up with the above petition.



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4. The petition filed by the petitioners under Section 5 of the Limitation Act, seek to condone the delay of 950 days. The petitioners explained the delay of each day occurred in filing the appeal. Only if a sufficient cause is shown, the delay could be condoned by allowing the petition.

5. The perusal of the affidavit filed by the petitioners in support of the petition only gives the following reason in paragraph No.4 of the affidavit, which is extracted below:

“ 4. I humbly submit that the judgment in appeal pronounced on 28.02.2022. We have to file the second appeal within 90 days, after receiving certified copies. I am only following the case. But due to I am suffering from Gall Bladder stone ailment from February-2022 onwards and got treatment. Hence, I am not able to file the second appeal in time”

6. In the averments extracted above, it is only stated that the first petitioner is suffering from Gall Bladder stone ailment in February 2022, still the delay occurred from 2023-2025 has not been explained. Further, when there are other four petitioners available and it is also argued by the learned counsel for the respondents 1 and 2 that one of the petitioners has also contested and got elected



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in the local body election and also he is also a practising Advocate, who is practising in the same Court and aware of the Court proceedings still they have consciously delayed the filing of the appeal. It is their further contention that the petitioners, who were aware of the proceedings did not choose to file this appeal in time and only when the proceeding in the E.P. was initiated and the plaintiff sought to execute the decree of the trial Court, they have come up with the present petition belatedly with a huge delay of 950 days, without adducing any sufficient cause for condonation of delay.

7. When the petitioners have approached this Court, seeking for condonation of delay of 950 days in filing the appeal, it is for the petitioners to explain the delay caused and afford proper explanations to convince the Court, to condone the delay. However, in the instant case, the petitioners have not even attempted to explain the huge delay caused, except the averments as extracted above. The averments made by the first petitioner and the in-action on the part of the other petitioners are not sufficient cause to condone the huge delay of 950 days.



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8. In view of the above deliberations, the petition, seeking to condone the delay of 950 days, is dismissed. No costs. Consequently, SA(MD)No.SR1346 of 2025 is rejected at the SR stage itself.

24-06-2025

LS

To
Sankara Nainar (Died)

1. Venkatesh
S/o. Late. Sankara Nainar,
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Vadakku Vallioor Village,
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G.ARUL MURUGAN,J.

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