



C.M.P.(MD)No.6205 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Second day of April Two Thousand and Twenty Five

PRESENT

The HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

C.M.P.(MD)No.6205 of 2024

in

S.A.(MD)SR.No.29691 of 2024

R.GURUSAMY

... PETITIONER

Vs

R.THIAGARAJAN (DIED)

1. R.SUBBULAKSHMI

2 T.MALLESHWARI

... RESPONDENTS

For Petitioner : Mr.K.K.Mahesh Raja, Advocate

For Respondent : Mr.N.Balasubramanian, Advocate for R1

Mr.S.A.Ajmal Khan, for R2

ORDER

The plaintiff in O.S.No.235 of 2010, on the file of the Subordinate Court, Palani has filed this civil miscellaneous petition to condone the delay of 2517 days in filing the above second appeal against the Judgment and Decree passed in A.S.No.57 of 2013, on the file of the learned Additional District (Fast Track) Court, Palani.

2. The petitioner entered into an agreement with the original defendant

namely R.Thiagarajan vide registered sale agreement dated 26.09.2004, for a total

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sale consideration of Rs.8,60,000/-. As per the sale agreement the petitioner paid a sum of Rs.7,60,000/- as an advance. After receipt of the balance amount of the sale consideration, the defendant refused to execute the sale deed in favour of the petitioner. Therefore, the petitioner filed a suit for specific performance in O.S.No.235 of 2010. The said suit was decreed in favour of the petitioner. Aggrieved over the same, the original defendant filed A.S.No.57 of 2013, before the Additional District (Fast Track) Court, Palani.

3. The learned Appellate Judge allowed the appeal and dismissed the original suit filed by the petitioner. In view of the said circumstances, the second appeal was filed with a delay of 2517 days.

4. In the affidavit filed by the petitioner, it is specifically averred that after the judgment and decree in A.S.No.57 of 2013, the parties entered into a compromise with the deceased original defendant namely R.Thiagarajan in the year 2019 and he agreed to receive additional sale consideration within a period of six months. Before entering into the terms of the compromise, the said original defendant namely R.Thiagarajan died on 20.01.2020. Thereafter, the petitioner informed about the compromise to the present respondents. The respondents initially agreed and thereafter, they had retracted. Therefore, the petitioner approached his lower Court counsel and entrusted the case papers to file the appeal before this Court and the



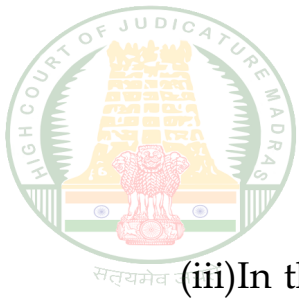
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lower Court counsel also filed the second appeal on 07.04.2022 in S.A.S.R(MD). No.15021 of 2022. The same was returned and the advocate clerk who handled the case left the advocate office. The said bundle was misplaced with the original written papers at the time of shifting the office. In the year 2024 the respondents filed the E.A., to set aside the sale deed executed in favour of the petitioner in E.P.No.154 of 2011. Hence, he approached the lower Court counsel and enquired about the number of the second appeal and the stage of the second appeal. The lower court counsel had contacted the counsel who had filed the second appeal and the S.A.(SR.)(MD).No.15021 of 2022 could not be traced in his office. Hence, the lower Court counsel did not respond properly and hence, the petitioner obtained the bundle along with the fresh certified copies of Judgment and decree and filed this second appeal with a delay of 2517 days and stated the delay was neither willful nor wanton. Therefore, the petitioner seeks to condone the delay. The learned counsel for the petitioner also submitted the following precedents:

(i)In the case of Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649

(ii)In the case of Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., reported in (2010) 5 SCC 459



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SCC 123

(iii) In the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7

(iv) In the case of B. Madhuri Goud v. B. Damodar Reddy, reported in (2012)
12 SCC 693

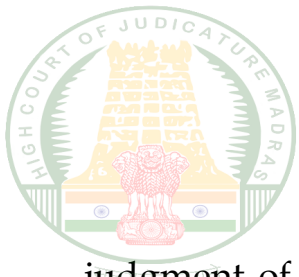
(v) In the case of Collector (LA) v. Katiji, reported in (1987) 2 SCC 107

(vi) In the case of State of W.B. v. Administrator, Howrah Municipality,
reported in (1972) 1 SCC 366

5. The second respondent, namely, wife of the deceased filed separate counter and also first respondent, namely, mother of the deceased also filed a separate counter and they also relied the judgment of the Hon'ble Supreme Court reported in 2010 4 MLJ 141 SC and the judgment of the Hon'ble Division Bench of this Court reported in 2020 6 CTC 714. the learned counsel appearing for the respondents submitted that no bonafide reasons have been stated in the affidavit and no circumstances were established by the petitioner to condone the humongous delay of 2517 days.

6. This Court considered the rival submissions made on either side and perused the materials available on record and the precedents relied upon by them.

7. Before going into the merits of the case, this Court considered the precedents relied upon by both the learned counsels appearing for the parties. From the

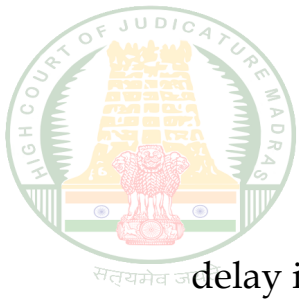


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judgment of the Hon'ble Supreme Court as stated supra and the Hon'ble Division Bench of this Court as stated supra, there is no bar to condone the inordinate delay of 2517 days in filing the second appeal when the delay is not on account of dilatory tactics, want of bonafide reasons, deliberate inaction or willful negligence on the part of the petitioner. The Hon'ble Supreme Court in the case of Esha Bhattacharjee v. Raghunathpur Nafar Academy, reported in (2013) 12 SCC 649 has held as follows:

21. From the aforesaid authorities the principles that can broadly be culled out are:

- i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.
- ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.
- iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.
- iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.
- v) Lack of bona fides imputable to a party seeking condonation of



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delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

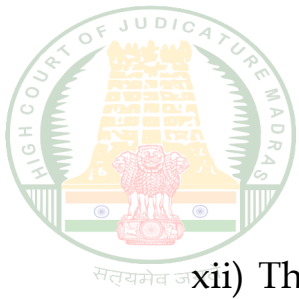
vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.



xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

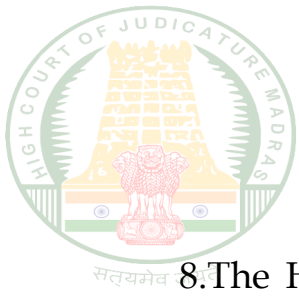
22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.



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8.The Hon'ble Supreme Court also in the case of Oriental Aroma Chemical Industries Ltd. v. Gujarat Industrial Development Corpn., reported in (2010) 5 SCC 459 has observed that as follows:

“14. ... The law of limitation is founded on public policy. The legislature does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The idea is that every legal remedy must be kept alive for a period fixed by the legislature. To put it differently, the law of limitation prescribes a period within which legal remedy can be availed for redress of the legal injury. At the same time, the courts are bestowed with the power to condone the delay, if sufficient cause is shown for not availing the remedy within the stipulated time.”

The expression “sufficient cause” employed in Section 5 of the Limitation Act, 1963 and similar other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which subserves the ends of justice. Although, no hard-and-fast rule can be laid down in dealing with the applications for condonation of delay, this Court has justifiably advocated adoption of a liberal approach in condoning the delay of short duration and a stricter approach where the delay is inordinate. Now upon a close look at the prayer made for condonation of delay we find that although the delay is substantial, the same has been sought to be explained in a manner even if it may not be fool proof but is quite convincing.”



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9.The Hon'ble Supreme Court in the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123 has held as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury.

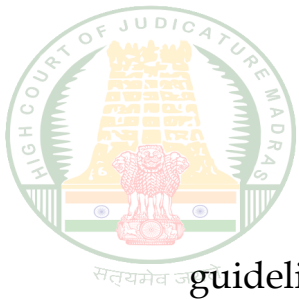


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The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim *interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of *mala fides* or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary



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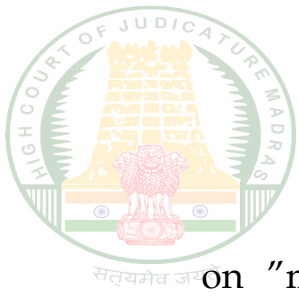
guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

10.The Hon'ble Supreme Court in the case of B. Madhuri Goud v. B. Damodar Reddy, reported in (2012) 12 SCC 693, has held as under:

“6. The expression “sufficient cause” used in Section 5 of the Limitation Act, 1963 and other statutes is elastic enough to enable the courts to apply the law in a meaningful manner which serves the ends of justice. No hard-and-fast rule has been or can be laid down for deciding the applications for condonation of delay but over the years courts have repeatedly observed that a liberal approach needs to be adopted in such matters so that substantive rights of the parties are not defeated only on the ground of delay.

11.The Hon'ble Supreme Court in the case of Collector (LA) v. Katiji, reported in (1987) 2 SCC 107 has held as follows:

Para 3. The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.] of the Indian Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters



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on "merits". The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant



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does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the “State” which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the “State” is the applicant praying for condonation of delay. In fact experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-

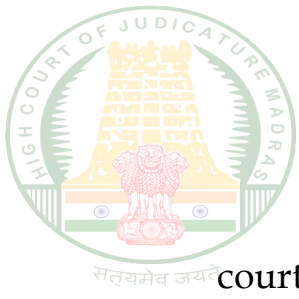


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handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned. And the matter is remitted to the High Court. The High Court will now dispose of the appeal on merits after affording reasonable opportunity of hearing to both the sides.

12.The Hon'ble Supreme Court in the case of State of W.B. v. Administrator, Howrah Municipality reported in (1972) 1 SCC 366 has held as under:

26. The legal position when a question arises under Section 5 of the Limitation Act is fairly well-settled. It is not possible to lay down precisely as to what facts or matters would constitute “sufficient cause” under Section 5 of the Limitation Act. But it may be safely stated that the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps, which he could have or should have taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact will only tend to be a curb on the free exercise of the judicial mind by the Court in determining whether the facts and circumstances of a particular case amount to “sufficient cause” or not. It is needless to emphasise that



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courts have to use their judicial discretion in the matter soundly in the interest of justice.

With the guidelines of the above principles laid down by the Hon'ble Supreme Court, this Court delves into the facts of this case.

13.The suit in O.S.No.235 of 2010 filed by the petitioner was decreed on 11.07.2011. The petitioner filed the execution proceedings and obtained the sale deed on 25.04.2012. Thereafter, the respondent's father preferred the appeal suit in A.S.No.57 of 2013 with humongous delay. The said appeal suit was allowed and the petitioner's suit in O.S.No.235 of 2010 was dismissed, vide judgment dated 21.02.2017. Thereafter, according to the petitioner, there was compromise talks and the same continued up to the year 2019 and the deceased sole defendant in the suit, had agreed to receive the additional consideration in the year 2019 and to make the said additional consideration, further period of six months was given. Before expiry of the said period, the defendant died on 20.01.2020. The petitioner and the mediators informed about the compromise to the respondents. The respondents, according to the petitioner agreed and subsequently retracted and therefore, the petitioner approached his lower Court counsel and entrusted the judgment and decree and other relevant case records to file the appeal. The lower court counsel engaged the advocate before this Court and the second appeal was filed on



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22.03.2022. The said second appeal was returned on 28.03.2022 for some rectification. The petitioner was not aware of any of the above proceedings. He was under the bonafide belief that his appeal got numbered. But, he came to know that the respondents have filed E.A.No.2 of 2024 to cancel the sale deed dated 25.04.2012. Immediately he approached the lower Court counsel. The lower Court counsel contacted the former counsel on record of this Court who had filed the second appeal in S.A.SR.(MD).No.15021 of 2022. At that time, the earlier counsel on record was unable to find out the records relating to the filing of S.A.SR(MD).No.15021 of 2022. He informed that the bundle was misplaced along with the return sheet issued by this Court. Therefore, the lower Court counsel did not respond properly. Hence, the petitioner applied another certified copy of the records and filed the present petition with the delay of 2517 days. The first respondent in his counter has not specifically denied the averment made in the affidavit about the compromise. In paragraph No.14, of the first respondent's counter, the first respondent has not controverted the averment relating to the compromise talks. Which reads as follows:

14.I respectfully submit that the entire averments raised by the appellant in para Nos.2 to 6 are denied and false and that the appellant herein have raised a simple reason for the delay of filing the second appeal that he is made and allegation against the advocate clerk and it is an office of the advocate and the reason of saying to trace the bundle



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within the office it has been taken nearly 7 years.

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14.The respondent No.2 filed the counter and it is only stated that the said allegation that the petitioner was trying to compromise with the present respondent is false one and also no valid proof has been placed to show that the original bundle in S.A.SR.MD NO.15021 of 2022 was misplaced.

15.From the above counter, this Court is unable to see that the specific reason assigned by the petitioner to condone the delay was specifically denied. It is the specific case of the petitioner that during the life period of the sole defendant, there was a compromise talk and he agreed, but unfortunately he passed away on 20.01.2020. Thereafter, it is specifically averred in the affidavit that the present respondents initially agreed to receive the additional amount and subsequently refused to receive the amount and filed the E.A.No.2 of 2024 to cancel the sale deed in the name of the petitioner. Hence, the petitioner approached his lower Court counsel and lower Court counsel informed that the bundle was misplaced and he was unable to trace and filed the present appeal with fresh certified copies of the case papers. The said averment was not specifically controverted by the respondents. Therefore, this Court finds that the reason assigned by the petitioner in the petition is bonafide and there was no deliberate inaction or negligence on the part of the petitioner. It is true that the delay is humongous delay of 2517 days. As



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per the principle, the length of the delay is not important and has to see whether the petitioner's reason is acceptable or not. The Hon'ble Supreme Court in the case of Oriental Aroma Chemical Industries Ltd. V. Gujarat Industrial Development Corporation, reported in 2010 5 SCC 459 has held that there is no necessity to prove the explanation in fool proof way but to show convincing reason and the relevant portion is as follows:

“Now upon a close look at the prayer made for condonation of delay we find that although the delay is substantial, the same has been sought to be explained in a manner even if it may not be fool proof but is quite convincing.”

16.The reasoning of the petitioner that the bundle was misplaced during the shifting of office of former advocate is also plausible one. The petitioner like litigants has engaged the advocate and entrusted the case papers to file the second appeal. The advocate has to take care of the interest of this client, which of course is the professional duty. The advocate also without any intention, inadvertently failed to follow the returned papers. Therefore, this Court finds no conduct which would disentitle the petitioner to get the relief. The petitioner also got decree and the same was executed up to the stage of the sale deed and the sale deed was in the name of the petitioner and in the said circumstances, this Court to avoid the miscarriage of justice invokes liberal pragmatic, non-pedantic approach in accepting the reason

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assigned by the petitioner to condone the delay of 2517 days. At the same time, even though no prejudice was caused to the respondents, but, they are to be compensated with heavy costs. Hence, this Court inclines to condone the delay with costs of Rs.1,00,000/- (Rupees One Lakh) each to the respondents.

17. Accordingly, the delay is condoned with costs of Rs.1,00,000/- to each respondent on or before 25.04.2025. It is made clear that if the petitioner fails to pay the aforesaid amount within the time stipulated, the order passed by this Court shall automatically stand vacated.

sd/-
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Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

ORDER
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in
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Date :22/04/2025

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