

CMP(MD)No.8890 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 17-02-2025

Delivered on : 17.04.2025

CORAM

THE HONOURABLE MR JUSTICE RMT.TEEKAA RAMAN

and

THE HONOURABLE MR JUSTICE P.B. BALAJI

CMP(MD) No. 8890 of 2024

in Rev.Aplc.(MD)No.SR44867 of 2024

M. Maruthappa Pandian,

Petitioner

Vs

1. M. Murugaiyan (Died),

2. Rengathammal, (Died)

3. Mariappan,

4. Sankudhurai,

5. Selvashobana,

6. Minor. M. Jayavijesh,

7. Minor. Maheesha,

(Respondents 6 & 7 rep. by their mother and

Natural Guardian 5th respondent)

8. Kuttythai

(Respondents 5 to 8 are added as legal heirs

of the Deceased 1st Respondent)

9. Indira

(Legal heirs of the deceased 2nd respondent) Respondents



CMP(MD)No.8890 of 2024

PRAYER in C.M.P.(MD)No.8890 of 2024: This Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 149 days in preferring the Review Application against the order passed by this Court in CMP(MD)No.5756 of 2023 in A.S.(MD)No.320 of 2008

PRAYER in Rev.Aplc(MD)No.SR44867 of 2024: This Review Petition filed under Order 47 Rules 1 and 2 and 114 of the Code of Civil Procedure, to review the order dated 05.01.2024 passed by this Court in C.M.P.(MD)No.5756 of 2023 in A.S.(MD)No.320 of 2008.

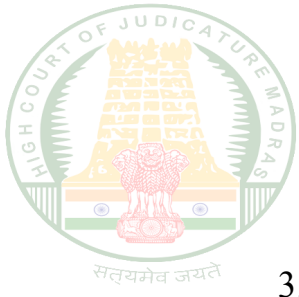
For Petitioner : Ms.J.Anandhavalli
for Mr.V.Angusamy

ORDER

P.B. BALAJI,J.

This Civil Miscellaneous Petition has been filed to condone the delay of 149 days in preferring the Review Application, seeking to review the order passed by this Court in C.M.P.(MD)No.5756 of 2023 in A.S.(MD)No.320 of 2008 dated 05.01.2024, dismissing the Section 5 application under the Limitation Act. The condone delay application was filed to condone the delay of 1144 days in filing the petition to restore A.S.(MD)No.320 of 2008 which had been dismissed for non prosecution on 10.11.2017.

2. We have heard Ms.J.Anandhavalli, for Mr.V.Angusamy, learned counsel appearing for the petitioner. We have also perused the records.



CMP(MD)No.8890 of 2024

WEB COPY

3. It is the case of the petitioner that the Execution Petition No.6 of 2009 was kept pending on account of pendency of A.S.(MD)No.320 of 2008 and only on 10.11.2017, only when the Ameen visited the scheduled property on 30.12.2022, for effecting delivery, the petitioner came to know about the dismissal of the A.S.(MD)No.320 of 2008.

4. On going through the affidavit filed in support of the petition, it is seen that as against the dismissal of the condone delay application by us on 05.01.2024, the applicant moved the Hon'ble Supreme Court and on 02.04.2024, the Special Leave for Appeal (C) No.7146 of 2023 came to be dismissed.

5. Now, after unsuccessfully challenging our order, dismissing the condone delay application, before the Hon'ble Supreme Court, the present review application has been filed along with the condone delay petition.

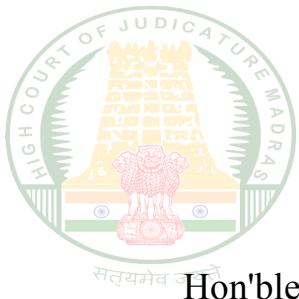


CMP(MD)No.8890 of 2024

WEB COPY

6. The reasons for seeking review are that the Execution Petition was pending for a very long time without any progress, in view of the pendency of A.S.(MD)No.320 of 2008 before this Court and that the normal procedure of closing the Execution Petition giving an opportunity to file fresh appeal, was not followed by the trial Court and further notice was not given before passing orders in the Execution Petition. It is therefore stated that new facts which were not disclosed earlier are available and therefore, the order ought to be reviewed.

7. Even before going into the merits of the review application, we find that admittedly, the Hon'ble Supreme Court dismissed the Special Leave for Appeal (C) No.7146 of 2023 as early as on 02.04.2024. Nothing prevented the review petition to be filed, immediately thereafter, especially, when the applicant has been having good counsel, who had advised him to even file a Special Leave Petition before the Hon'ble Supreme Court. Absolutely not a single reason is assigned explaining the delay of 149 days, excepting for a statement that the delay in filing the review application is only because of the Special Leave Petition before the



CMP(MD)No.8890 of 2024

WEB COPY

Hon'ble Supreme Court. The same does not justify the filing of the review application on 28.06.2024 and therefore, we are not satisfied with the so called reason assigned by the review applicant, seeking condonation of delay of 149 days in preferring the review application. Even otherwise on merits, the review application appears to be blaming the Court on the ground that the Court should have issued notice before passing orders. However, while dismissing C.M.P.(MD)No.5756 of 2023, we have categorically found that the review applicant was represented by a counsel before the Executing Court and that he was only trying to blame the counsel for not informing him that the appeal was dismissed for non-prosecution.

8. We have also specifically held that being a suit for specific performance, it is the duty of the petitioner to have diligently followed up the matter with his counsel, without excepting the counsel to inform the status of the case. Noticing the delay was more than 5 years and not satisfied with the reasons seeking to condone the delay, we dismissed the condone delay petition. Even in the review application, the reasons brought up, challenging our order and seeking review are not touching any



CMP(MD)No.8890 of 2024

of the above findings rendered by us, but, merely shifting the blame from the counsel to the Court. Therefore, no case is made out under Order 47 of the Code of Civil Procedure, for reviewing the order passed by us in C.M.P.(MD)No.5756 of 2023. The Miscellaneous Petition is dismissed and the Review Application is rejected at the S.R stage itself.

LS

(T.K.R.J) & (P.B.B.J)

17.04.2025



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CMP(MD)No.8890 of 2024

RMT.TEEKAA RAMAN, J.
and
P.B. BALAJI.J.

LS

Pre-delivery order made in
CMP(MD) No. 8890 of 2024
in Rev.Aplc.(MD)No.SR44867 of 2024

17.04.2025