



CMP(MD) No.11806 of 2024

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

Wednesday, the Nineteenth day of March Two Thousand and Twenty Five

PRESENT

The HONOURABLE MR. JUSTICE K.K. RAMAKRISHNAN

CMP(MD) No.11806 of 2024

in

SA(MD) SR No.47799 of 2024

1 PARVATHY

W/O.LATE. CHINNAKALIAPPAN,
ATCHANKULAM VILLAGE,
SRIVILLIPUTTUR TALUK, VIRUDHUNAGAR DISTRICT.

2 C.KARUPPASAMY,

S/O. LATE. CHINNAKALIAPPAN,
ATCHANKULAM VILLAGE,
SRIVILLIPUTTUR TALUK, VIRUDHUNAGAR DISTRICT.

3 C.DURAI

S/O. LATE. CHINNAKALIAPPAN,
ATCHANKULAM VILLAGE,
SRIVILLIPUTTUR TALUK, VIRUDHUNAGAR DISTRICT.

... PETITIONER(S)

Vs

1 CHELLATHAI

W/O. MUTHUSAMY, ATCHANKULAM VILLAGE,
SRIVILLIPUTTUR TALUK, VIRUDHUNAGAR DISTRICT.

... RESPONDENT(S)

For Petitioners: M/s.M.Ashok Kumar, Advocate

For Respondent: Mr.M.Thirunavukkarasu, Advocate



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ORDER

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The defendants in O.S.No.229 of 2011 on the file of the Additional Subordinate Judge, Srivilliputtur, have filed this petition to condone the delay of 568 days in filing the second appeal.

2. The respondent/plaintiff filed a suit for specific performance on the basis of the sale agreement executed by the defendants dated 02.09.2009 and 03.09.2009 respectively. The trial court declined to grant a decree of specific performance on the basis of the sale agreement. However, she was granted an alternative relief of recovering a refund of the advance amount. Aggrieved by the same, she filed an appeal in A.S.No.44 of 2019 before the learned Principal District Judge, Virudhunagar District at Srivilliputtur. The learned First Appellate Judge allowed the appeal and granted a decree of specific performance. Challenging the same, the petitioners/defendants filed an appeal with the delay of 568 days.

3. In the affidavit, the petitioners stated that the third petitioner filed additional affidavit on behalf of the remaining petitioners. Paragraph No.4 of the affidavit stated as follows:-

“4. I humbly submit that were shocked over the judgment and decree of the first Appellate Judge. I humbly submit that I was looking after the case and I informed my counsel to initiate steps for preferring Appeal. I humbly submit that I was not sacking good



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health and hence, I could not further submit that since the printed judgment was not ready I met the present counsel for preferring Second Appeal with certified copies, I humbly submit that my counsel informed me that there is a delay of 568 days in filing the Appeal. The memorandum of grounds filed along with the Appeal may be treated as part and parcel of the Affidavit.”

4. The respondent filed counter and also submitted that after obtaining notice in the execution proceedings, there is no bona fide reason assigned in both the original affidavit and the additional affidavit filed by the petitioners to condone the delay of 568 days in filing the second appeal.

5. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on records.

6. In the petition, the petitioners specifically averred that they applied for a copy of the printed judgment. But, they have not received the same till date. Apart from that, the third petitioner alone looked the entire case proceedings and he was suffered from some illness. The same was denied by the respondent.

7. It is the case of the respondent that the petitioners already got a copy of the printed judgment and intentionally evaded from filing the Second Appeal. Apart from that, there was no record to show the medical illness of the third petitioner. But, this Court bone fidely believed the averment, which was stated in the affidavit is



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correct. Hence, this Court satisfies the reasons stated in the affidavit.

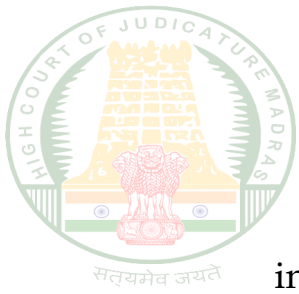
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8. Further, this Court is duty bound to bring the principle laid down by the Hon'ble Supreme Court to condone the delay in filing the appeal in the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123, the relevant paragraphs are extracted hereunder:-

10.The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

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. 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

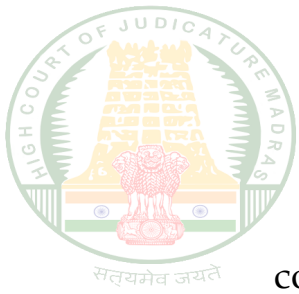


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in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12.A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *vShakuntala Devi Jainv.Kuntal Kumari*[AIR 1969 SC 575 : (1969) 1 SCR 1006] and *State of W.B. v. Administrator, Howrah Municipality*[(1972) 1 SCC 366 : AIR 1972 SC 749] .

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



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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 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.

9. Applying the above principle, this Court satisfied with the reasons stated in the affidavit of the petition that the printed judgment was not served upon the petitioners and the third petitioner, who has been looked the entire case was suffered from serious illness. Hence, this Court is inclined to condone the delay of 568 days in filing the above Second Appeal in order to render the decision on merits.

10. Accordingly, this petition is allowed on payment of cost of Rs.10,000/- (Rupees Ten Thousand Only) payable to the learned counsel for the respondent on or before 17.04.2025, failing which, this petition stands dismissed automatically without further reference to this Court.

sd/-
19/03/2025

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/04/2025

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

Dss

+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-3167[I] dated 20/03/2025)



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ORDER
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in
SA(MD) SR No.47799 of 2024
Date :19/03/2025

NBF/VR/ SAR/ (02/04/2025) 7P/2C

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