



C.M.P.(MD)No.14221 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2025

CORAM

THE HONOURABLE MR.JUSTICE **G.ARUL MURUGAN**

C.M.P.(MD)No.14221 of 2025
in
Rev.Aplc(MD)SR.No.71505 of 2025

Vettumperumal (Died)

Kalanjiam (Died)

1. Annathai
W/o.Late Vettumperumal
2. Krishnaveni
D/o.Late Vettumperumal
3. Srivaikuntam
S/o. Late Vettumperumal
4. Sermakani
D/o.Late Natarajan
5. Annalakshmi
D/o.Late Natarajan

... Petitioners/review applicants

VS.

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Sankara Nainar (Died)

1. Venkatesh
S/o.Late Sankara Nainar
2. Thanushkodidurai
S/o.Late Sankara Nainar
3. Reshikesavan
S/o.Late Vettumperumal ... Respondents/Respondents

Civil Miscellaneous Petition filed under Section 5 of the Limitation Act, 1963, praying to condone the delay of 28 days in filing the review application against the order passed in C.M.P.(MD)No.2132 of 2025 in S.A.(MD)SR.No.1346 of 2025 dated 24.06.2025.

Review Application filed under Order XLVII Rules 1 & 2, read with Section 114 of the Code of Civil Procedure, 1908, praying to review the order passed by this Court in C.M.P.(MD)No.2132 of 2025 in S.A(MD)SR.No.1346 of 2025 dated 24.06.2025 and set aside the same.

For Petitioners/review applicants : Mr.V.Mukilan
for Mr.M.Muniasamy



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ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 28 days in filing the review application i.e., Rev.Aplc(MD)SR.No.71505 of 2025. The review application is filed under Order XLVII Rule 1 of CPC seeking to review the order dated 24.06.2025 made in C.M.P.(MD)No.2132 of 2025 in S.A.(MD)SR.No.1346 of 2025.

2. Though this application seeks to condone the delay of 28 days, since the delay occurred is in the review application filed, this Court perused the order against which the review is sought to be made.

3. It is seen that five petitioners herein, who had filed the above civil miscellaneous petition has originally filed S.A.(MD).SR.No.1346 of 2025 challenging the judgment and decree dated 28.02.2022 passed in A.S.No.28 of 2015 on the file of the Sub-Court, Vallioor, confirming the judgment and decree dated 24.11.2014 passed in O.S.No.130 of 2007 on the file of the



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Additional District Munsif Court, Vallioor. The second appeal was filed along with CMP (MD)No.2132 of 2025 with a delay of 950 days in filing the appeal.

4. While considering the application to condone the delay, the Court noted from the records that the suit originally filed in O.S.No.130 of 2007 seeking for declaration and mandatory injunction came to be decreed on 24.11.2014. The appeal preferred by the petitioners herein in A.S.No.28 of 2015 also came to be dismissed on 28.02.2022. In view of the dismissal of the appeal, the declaration and mandatory injunction decree granted as against the petitioners herein was operating from 28.02.2022. The petitioners ought to have diligently filed the appeal and prosecuted the same within time. However, only after an execution petition in E.P.No.4 of 2024 was filed by the respondents herein and notice was served to the petitioners on 30.08.2024, the petitioners have come up with the appeal along with an application seeking to condone the delay of 950 days.



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5. This Court also considered the averments in the affidavit filed in support of the condone delay application. The only averment made in the affidavit has been extracted in paragraph No.5 of the order dated 24.06.2025 in C.M.P.(MD)No.2132 of 2025 in S.A.(MD)SR.No.1346 of 2025. The Court noted that when there are five petitioners and only one of the petitioners had Gall Bladder stone ailment in February 2022, inaction on the part of the other petitioners in not taking steps to file the appeal has not been explained. Further, it was also noted that even according to one of the petitioners who had ailment in February 2022, the delay that occurred thereafter, from 2023 to 2025, has not been explained. The Court also noted that one of the petitioners is an elected member and is also practicing as an Advocate in the same Court. The respondents had stoutly objected, contending that the petitioners were well aware of the decree passed in the first appeal. Only to frustrate the execution proceedings, the petitioners have come up with the appeal along with an inordinate delay of 950 days.



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6. In the order dismissing the condone delay application, the Court gave a finding that when an application is filed to consider the delay under Section 5 of the Limitation Act, 1963, then the petitioners ought to have explained the delay occurred in filing the appeal. Under Section 5 of the Limitation Act, 1963, only when the delay occurred is for a sufficient cause, the delay would be condoned. In the instant case, the Court noted that the petitioners, except the averment which has been extracted in the order, have not even attempted to explain the delay that has been caused in filing the appeal.

7. Paragraph Nos.6 and 7 of the order dated 24.06.2025 dismissing the condone delay application are extracted hereunder:

"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



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petitioners has also contested and got elected in the local body election and 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. This is not a case where the delay has been explained and the Court had refused to accept the delay but it is a case where, the petitioners had not even attempted to explain the delay. It is well settled by several decisions of the Hon'ble Supreme Court that unless and until the delay occurred in filing the appeal is properly explained, the same cannot be condoned by extending any sympathy or by adopting a liberal approach at the costs of rights accrued to the respondents.

9. When the condone delay application has been dismissed, the petitioners have now come up with review application seeking to review the order. It is to be noted that even this review application has not been filed within time and the present CMP has been filed to condone the delay of 28 days in filing the review application.

10. The learned counsel appearing for the petitioners contended that the application filed under Section 5 of the Limitation Act, 1963, ought to be considered liberally and since the same has not been considered liberally



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as per the decisions of Hon'ble Supreme Court, the petitioners are entitled to seek review of the order.

11. In essence, the contention of learned counsel for the petitioners only seems to be that the order passed is erroneous and not in tune with Section 5 of the Limitation Act, 1963. This is the main contention and ground raised in the review application. This Court is not able to accept the contention raised by learned counsel for petitioners.

12. The scope of Order XLVII Rule 1 of CPC has been, time and again, explained and reiterated by Hon'ble Supreme Court that the review is to be confined to parameters as set out in Order XLVII Rule 1 of CPC. The power of review is to be confined to the scope of the provision. In a review, the Court does not sit in appeal over the order already passed. A review cannot be treated as an appeal in disguise. If the petitioners feel that the order is erroneous, then the erroneous order cannot be corrected in a review and the remedy for the petitioners lies only by way of filing an appeal.



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13.The arguments made and grounds raised do not fall within the parameters contained under Order XLVII Rule 1 of CPC. The review application filed is therefore, not sustainable. The execution petition is pending for nearly two years, when the execution petitions are ought to be disposed of within a period of six months as per the dictum of Hon'ble Supreme Court. As such this Court feels that the present review filed along with delay application is only an attempt to further drag or delay the execution proceedings.

14. In view of the above, there is no merits in the Civil Miscellaneous Petition and same is dismissed. Consequently, review application i.e., Rev.Aplc(MD)SR.No.71505 of 2025 is rejected at the SR stage itself. There shall be no order as to costs.

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Neutral Citation : Yes / No
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