

CMP(MD) NO. 17353 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28-07-2025

CORAM

THE HONOURABLE MR JUSTICE K.K. RAMAKRISHNAN

CMP(MD) NO. 17353 of 2023

IN

AS(MD) SR NO. 93401 OF 2023

K.Subramanian

Petitioner(s)

Vs

1. K.S.Gunasekaran

2. S.Dinesh

3. S.Priyanka

Respondent(s)

For Petitioner(s):

Mr.V.Jeyachandran

Mr.P.Shri Santhaaji

Mr.V.Malaiyendran

For Respondent(s):

M/s.D.Venkatesh

Mr.P.Chellapandian

Mr.N.Adithyavijayalayan For R1

M/s. V.Boominathan

Mr.R.Aathi Saravana For R2 & R3

ORDER

This petition has been filed to condone the delay of 563 days in filing the above first appeal.

2.The first defendant in O.S.No.45 of 2015 on the file of the Additional District

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CMP(MD) NO. 17353 of 2023

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and Sessions Court, (Fast Track Court), Palani, has filed the appeal suit with the above said delay. In the affidavit he specifically stated about the reason in paragraphs 9 to 13. The learned counsel on the basis of the averments in the affidavit would submit that due to the health problem, he has not filed the appeal. Apart from that during the interregnum period of Covid - 19, he has not approached the Court in time. He also submits that as per the direction of the Honourable Supreme Court, the period of Covid - 19 would have been excluded from calculating the period. Apart from that he is suffering from age old ailments and heart decease. Hence, he has not approached the counsel in time. But, the Registry calculated the period without excluding the Covid - 19 pandemic period. Hence, he seeks to allow the application, considering the above said bonafide reasons.

3.The first respondent filed the counter denying the said allegation and also specifically stated that the explanation about the delay should not be considered. The second respondent has not filed Counter. But, vehemently opposed to condone the delay.

4.This Court considered the rival submissions and perused the records.

5.Before going into the merit of the case, this Court recapitulates the principles laid down by the Hon'ble Supreme Court to condone the delay in filing the appeal in



CMP(MD) NO. 17353 of 2023

the following cases:

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(i) 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, nonpedantic 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.

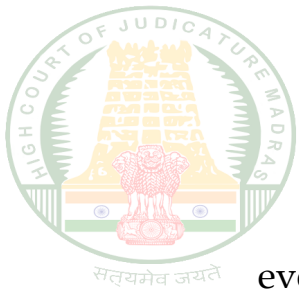
ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

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 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



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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.

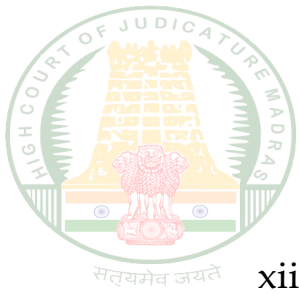
viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

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.



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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 nonchallant manner requires to be curbed, of course, within legal parameters.

(ii).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:



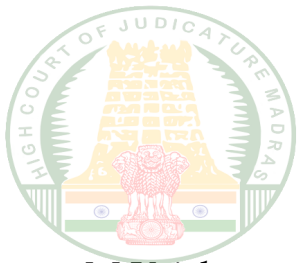
CMP(MD) NO. 17353 of 2023

WEB COPY

“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.”

(iii) The Hon'ble Supreme Court in the case of N. Balakrishnan v. <https://www.mhc.trn.gov.in/judis>

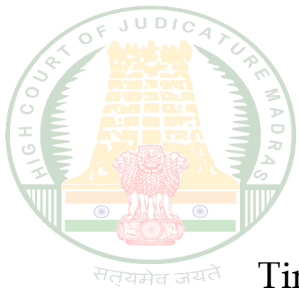


M.Krishnamurthy, reported in (1998) 7 SCC 123 has held as follows:

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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.

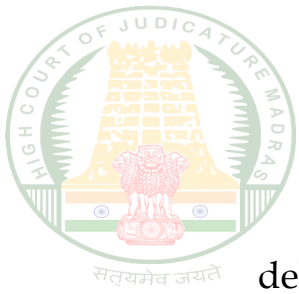
11. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a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



CMP(MD) NO. 17353 of 2023

WEB COPY

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 guideline that when courts condone the



CMP(MD) NO. 17353 of 2023

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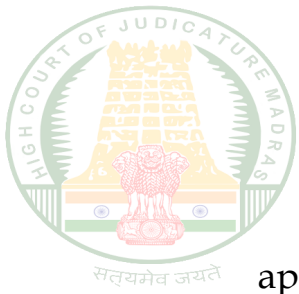
delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

(iv).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.

(v).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.

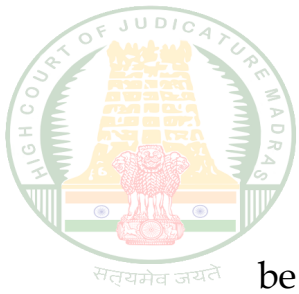
The legislature has conferred the power to condone delay by enacting Section 5 [Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the



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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 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

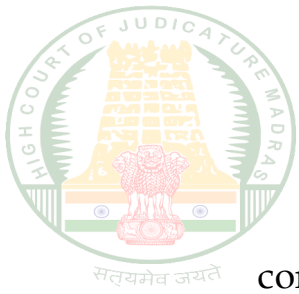


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be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant 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 notemaking, filepushing 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



CMP(MD) NO. 17353 of 2023

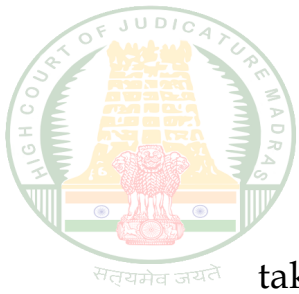
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community, does not deserve a litigant-non-grata status. The courts therefore have to be informed with the spirit and philosophy of the provision in the course of the interpretation of the expression “sufficient cause”. So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-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.

(vi).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



CMP(MD) NO. 17353 of 2023

WEB COPY

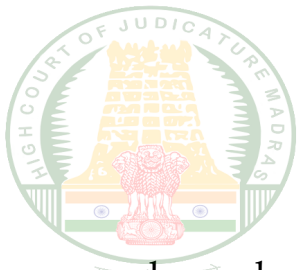
taken. Here again, what would be such necessary steps will again depend upon the circumstances of a particular case and each case will have to be decided by the courts on the facts and circumstances of the case. Any observation of an illustrative circumstance or fact will only tend to be a curb on the 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 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.

(vii).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.”

6.The Judgment and decree delivered on 07.09.2021 and the certified copy was

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CMP(MD) NO. 17353 of 2023

made ready on 06.10.2021. It is admitted fact that the Honourable Supreme Court
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has ordered to exclude the period covered under the Covid - 19 pandemic, both
first spell and second spell. Apart from that the appellant also suffering from some
heart ailments and also age old illness. Even though no certificate has been
produced, this Court satisfied with the reasons, when there is no contra evidence
adduced by the respondent along with counter. In view of that this Court is inclined
to allow this petition on payment of cost to the respondent.

7. Accordingly, this petition stands allowed on payment of costs of Rs.10,000/-
(Rupees Ten Thousand only) to the respondent by the petitioner within a period of
fifteen days from the date of receipt of a copy of this order. Failing which, this
petition shall stand dismissed automatically without any reference to this Court.

sd/-
28/07/2025

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/08/2025
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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CMP(MD) NO. 17353 of 2023

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THE ADDITIONAL DISTRICT AND SESSIONS JUDGE(Fast Track Court),
PALANI.

ORDER IN
CMP(MD) No.17353 of 2023
Date :28/07/2025

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Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023