

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.01.2026

Pronounced on: 13.02.2026

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THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.328 of 2025
and CMP. No.2111 of 2025**

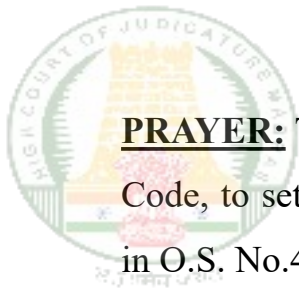
1.P.Avoодаiammal (died)
2.M.S.K.Nayagi
3.Kalavathi
(Petitioner-3 is brought on record as
LR of the deceased P-1 viz., P.Avoодаiammal vide
Court order dated 17.10.2025 made in
CMP. No.25546 of 2025 in CRP. No.328 of 2025)

Petitioner(s)

Vs

1.P.Narayanan
2.The Sub-Registrar,
Sub-Registrar Office,
Alandur, Chennai – 600 061.
3.The Commissioner,
Corporation of Chennai,
Having Office at
Ripon Building, Corporation,
Chennai.
4.The Deputy Commissioner Revenue,
Corporation of Chennai,
Having Office at Ripon Building Corporation,
Chennai – 600 003.
5.Kalimuthu
6.The Assistant Revenue Officer Zone,
Chennai, Having Office at,
Zone XII, Chennai Corporation,
Alandur.

Respondent(s)



PRAAYER: This Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to set aside the order and Decree dated 03.09.2024 made in I.A. No.353 of 2021 in O.S. No.45 of 2016, on the file of the Principal District Munsif, Alandur.

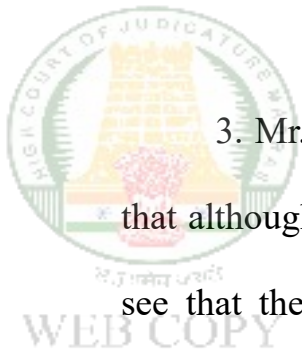
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For Petitioners : Mr.V.P.Senguttuvel,
Senior Counsel
for M/s.K.Indupriya
For Respondents : Mr.T.Mohan,
Senior Counsel for
Mr.S.Sathish Rajan for R1
Mr.A.Anandan,
Government Advocate, for R2 and R4
No Appearance for R3

ORDER

The defendants 1 and 2 in O.S.No. 45 of 2016 of the file of the Principal District Munsif, Alandur, are the revision petitioners. The petitioners challenge the order of the Trial Court, dismissing I.A.No. 353 of 2021, which was filed for condonation of delay of 1,080 days in filing the application to set aside the ex-parte decree dated 05.03.2018.

2. I have heard Mr.V.P. Senguttuvel, learned Senior Counsel for Ms. K.Indupriya, for the petitioners and Mr. T. Mohan, learned Senior Counsel for Mr. Sathish Rajan, for the 1st respondent and Mr.A.Anandan, learned Government Advocate for the official respondents.



3. Mr.V.P.Senguttuvel, learned Senior Counsel, would first and foremost contend that although the delay appears to be huge, namely 1,080 days, the Trial Court failed to see that the petitioners had made out sufficient cause for condonation of the delay.

Mr.V.P. Senguttuvel, learned counsel taking me through the affidavit filed in support of the condone delay application, would contend that the plaintiff, who is none else than the son of the 1st revision petitioner who died pending the revision and the brother of the 2nd revision petitioner, who himself being an advocate, had taken advantage of his position and obtained an ex-parte decree behind the back of the petitioners. It is the further contention of Mr.V.P.Senguttuvel, learned Senior Counsel that the plaintiff has taken summons to an address which the plaintiff knew was not the address in which the petitioners were residing at that relevant point of time and therefore, he has played fraud in obtaining an ex-parte decree in his favour.

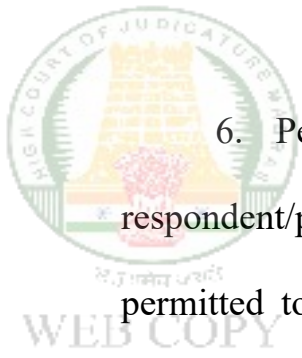
4. Mr. V.P. Senguttuvel, learned counsel, on merits, would contend that the plaintiff only challenges the document cancelling the power of attorney executed by the plaintiff's mother, namely the 1st revision petitioner and does not challenge the settlement deed executed by the mother on the same day in favour of her daughter, that is the sister of the plaintiff. The learned Senior Counsel would further state that the property has subsequently been settled in favour of the daughter, who was in fact the original owner of the property, having purchased the same under a registered sale deed dated 10.10.1988. The learned counsel would therefore state that in the absence of any



challenge to the settlement deed, there is no purpose in challenging the cancellation of the power of attorney alone. However, pending the present revision, the principal, namely the mother, also died and even though nothing may survive insofar as the relief of declaration is concerned, the relief of permanent injunction granted is working serious hardship to the present and lawful owner, namely the 2nd revision petitioner. He would further state that the delay has been sufficiently explained and the petitioners did not have good assistance from the lawyers engaged by them as well and in such circumstances, when the delay has been properly explained, the learned Senior Counsel states that the Trial Court ought not to have dismissed the application and should have instead condoned the delay and given an opportunity to the petitioners to contest the suit on merits.

5. Mr. V.P. Senguttuvel, learned Senior Counsel in support of his submissions, has relied on the following decisions:

1. *Mool Chandra vs Union of India and another*, reported in (2025) 1 SCC 625;
2. *Inder Singh vs State of Madhya Pradesh*, reported in 2025 SCC Online SC 600;
3. *Commissioner, Salem City Municipal Corporation vs R. Mallika and another*, reported in 2023 (2) CTC 443;
4. *N.P. Srinivasan vs S. Santhalakshmi*, reported in 2013(3) CTC 220; and
5. *P. Subramanian and others vs S. Viswasam*, reported in 2011 (2) CTC 502.



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6. Per contra, Mr.T.Mohan, learned Senior Counsel appearing respondent/plaintiff, would first and foremost contend that the petitioners cannot be permitted to canvass the merits of the suit claim at the stage of consideration of a condone delay application seeking to set aside the ex-parte decree. He would further state that the petitioners are bound to show sufficient cause as envisaged under Section 5 of the Limitation Act and in the absence of the same, the petitioners are not entitled to any relief, much less the discretionary relief under Section 5 of the Limitation Act.

7. Mr.T Mohan, learned Senior Counsel, taking me through the typed set of papers contends that even according to the petitioners, when a protest petition was filed before the Sub-Registrar, Alandur, in October 2019, the Sub-Registrar, Alandur, informed the 1st petitioner that her son had obtained an ex-parte decree. He would therefore state that even after October 2019, no steps were taken diligently by the petitioners until March 2021, when alone the application for condonation of delay came to be filed. He would therefore state that the petitioners had failed to show sufficient cause and by their own showing, they have not been diligent in approaching the Court to have the ex-parte decree set aside.

8. On the side of the respondents, Mr.T.Mohan, learned Senior Counsel has relied on the decision in support of his submissions:-



1. *Rajneesh Kumar and another vs Ved Prakash*, in SLP.(Civil)Nos.935 -936 of 2021 in 2024 INSC 891;
2. *P.Suresh Kumar vs. M.Dhandapani and others*, in CRP.No.3801 of 2025 dated 07.11.2025; and
3. *D.V.Venkatesan and another vs. N.R.Subramanian and another*, in CRP.No.52 of 2025 dated 31.01.2025.

9. I have carefully considered the submissions advanced by the learned Senior Counsel for the parties.

10. It is now a fairly well-settled legal position that a Court considering an application under Section 5 of the Limitation Act for condoning a delay in seeking to set aside any ex-parte order or decree, has to be primarily proceeded on the ground whether sufficient cause is shown or not. The Court should not start off with the merits of the matter and only when the Court finds that sufficient cause has been made out, it would be even open to the Court to look into the merits of the suit claim, before exercising discretion or not. In this context, it is therefore necessary to examine the affidavit filed in support of the condone delay application. The delay is admittedly 1080 days. The case of the petitioners is that the plaintiff, their son and brother respectively has wantonly given a false address and without even serving summons in the suit, has snatched an ex-parte decree which came to light only when the mother came to know that despite cancellation of the power of attorney executed by her in favor of the plaintiff, her son, he

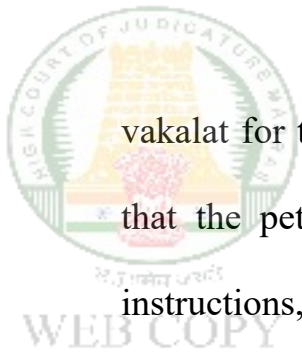


was continuing to identify buyers for the property belonging to her, on the strength of the decree passed in the suit, setting aside the cancellation of the power of attorney.

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11. No doubt, as rightly pointed out by Mr.T.Mohan, learned senior Counsel, the petitioners have stated that they came to know about the ex-parte decree in October 2019, but attempts have been made to explain the delay in approaching the Court only in March 2021. It is to be seen whether such explanation offered by the petitioners would qualify to be "sufficient cause" as required under Section 5 of the Limitation Act and as enunciated by the various decisions of the Hon'ble Supreme Court as well as this Court.

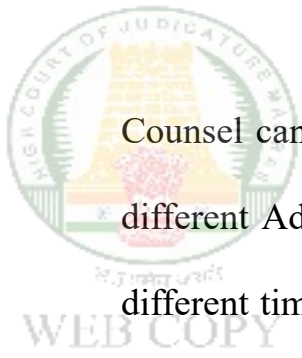
12. The petitioners contend that the plaintiff had willfully given a wrong address for both the petitioners and in fact, in the affidavit filed by the mother in support of the condone delay application, though she admits that summons was served on her as early as on 24.02.2016, she doubted her signature in the summons as she was not residing in the address to which the summons were sent. However, no steps have been taken by the mother to establish such an allegation made in the affidavit. Admittedly, the 2nd petitioner, even according to the petitioners, has entered appearance by engaging a Counsel and was set ex-parte subsequently, for non-filing of written statement alone. There is no satisfactory explanation as to why the 2nd petitioner was remaining silent from 2016 onwards, despite having engaged a Counsel to defend her. The reason given by the petitioners is that they had engaged one T.Sudhan Raj, Advocate for another suit filed by the very same plaintiff in O.S. No.45 of 2016 and the said Advocate had filed



vakalat for the 2nd petitioner in the present suit as well. It is claimed by the petitioners that the petitioners were not even aware of the second suit and that without their instructions, more specifically the 2nd petitioner's instructions, the Advocate has entered appearance on her behalf. It is also alleged that the said Advocate is a close friend of the plaintiff, who is also a practicing Advocate.

13. It is not the case of the petitioners that the choice of Advocate was that of the plaintiff's son and brother respectively of the petitioners. It is the petitioners who have voluntarily engaged the services of a lawyer and therefore, the petitioners cannot casually claim that they were not aware of the suit despite summons being served on the second petitioner admittedly. Though the 1st petitioner has claimed that her signature may have been forged in the summons, the 1st petitioner has not taken appropriate steps to prove the said claim and therefore, it merely remains on paper. In such circumstances, the allegation that summons, if sent to a wrong address is of no avail.

14. Be that as it may, even according to the petitioners, on 17.10.2019, the officials at the Sub-Registrar's Office, Alandur, had informed the mother, 1st petitioner, about the ex-parte decree. Application to set aside the ex-parte decree along with the condone delay application was filed only on 12.03.2021. The explanation for the delay as offered by the petitioners is that they had engaged an Advocate by name Kavitha Balakrishnan and no steps had been taken by the said Advocate, which necessitated them to engage another Advocate and filed the application. The said reasons blaming the



Counsel cannot be appreciated by this Court. In fact, the petitioners herein, blame two different Advocates in an attempt to explain the delay and inaction in respect of two different timelines. Firstly, they allege that the lawyer engaged by them for another suit had misused his authority and entered appearance in the present suit for the 2nd petitioner. Secondly, it is alleged that the Counsel engaged subsequently did not follow up the matter, which caused the instant delay. The practice of blaming the Advocates who have been engaged to represent the petitioners in condone delay applications has not gone down well with Courts.

15. The Hon'ble Supreme Court in *Rajneesh Kumar's case* (referred herein supra), held that even if the Court can assume that the lawyer was careless or negligent, that itself would not be a ground to condone long and inordinate delay as the litigant owes a duty to be vigilant of his own rights and is expected to be equally vigilant about judicial proceedings pending in the Court. The Hon'ble Supreme Court, therefore, held that the litigant should not be permitted to throw the entire blame on the head of the Advocate and thereby disown him at any time and seek relief.

16. I had an occasion to deal with a case where the reason for delay was shifted to the Counsel. In *Chitravel and another Vs. Jothimani*, reported in 2024(2) CTC 197, I held that discretion of the Court to condone delay can be exercised only when sufficient and just cause is shown and reasons appear to be probable and not for the mere asking. I have also held that the parties cannot casually blame their Counsel who conducted the



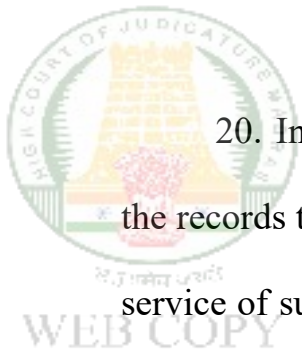
trial, especially behind the Counsel's back and get favourable orders from the Court, condoning huge and inordinate delay.

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17. Coming to the decisions that have been relied on by the learned Senior Council Mr.V.P.Senguttuvel, no doubt the Hon'ble Supreme Court in *Inder Singh's case* (referred herein supra) held that, if in a particular case, merits have to be examined, it should not be scuttled merely on the basis of limitation. However, that was a case where valuable immovable property of the state was at stake and an opportunity was therefore required to consider the case on merits. Insofar as the other decisions relied on by the learned Senior Counsel, Mr.V.P.Senguttuvel, stated herein above, all these decisions proceeded on the footing that length of delay is not material and sufficiency of explanation is the relevant criteria.

18. In fact, in *Commissioner, Salem Municipality's case* (referred herein supra), the delay was condoned on the ground that the Trial Court had passed a cryptic non-speaking ex-parte judgement.

19. In *N.P. Srinivasan's case* (referred herein supra), the Court found that the defendant was not served with any notice at any point of time and fraud had been played on the Court and therefore, the Court did not put long delay against the defendant.



20. In *P. Subramanian's case* (referred herein supra) also, the Court found from the records that the affidavit of process server or his endorsement did not indicate proper service of summons and therefore, thought it fit to give an opportunity to the defendant, though delay was 1,147 days. I do not see how these decisions would apply to the facts of the present case.

21. As already discussed, the petitioners, despite service of summons and one of them even engaging a Counsel have been callous in defending the suit especially when litigation is not new to them. Even according to the petitioners, they are already defending a suit in O.S.No. 45 of 2016 filed by the very same plaintiff. In such circumstances, to contend that the petitioners were unaware of the suit can never be acceptable.

22. In *D. V. Venkatesan's case* (referred herein supra), this Court held that delay cannot be excused as a matter of generosity in rendering substantial justice and rules of limitation being not meant to destroy rights of parties but only bars remedy, should not be interpreted in a manner to reopen a remedy which is extinguished by operation of law.

23. The Senior Counsel also relied on *Mool Chandra's case* (referred herein supra), where the Hon'ble Supreme Court held that if the cause for delay would fall within the four corners of "sufficient cause", irrespective of the length of delay, the same



deserves to be condoned. However, in the very same decision, the Hon'ble Supreme Court has further held that if the cause shown is insufficient, irrespective of the period of delay, the same would not be condoned.

24. I had an occasion in *Suresh Kumar's case* (referred herein supra), where I held that the scope of enquiry in applications under Section 5 of the Limitation Act is limited to whether the applicant has made out any "sufficient cause" or not and the Court cannot go into merits of the matter in dispute.

25. Very recently, the Hon'ble Supreme Court in a very elaborate judgement in *Shivamma (dead) by Lrs. Vs. Karnataka Housing Board and others*, reported in 2025 SCC Online SC 1969, after considering the decision in *Inder Singh's case* (referred herein supra) as well, has reiterated that, at the stage of condonation of delay, the Court can only consider the issue of sufficient cause being shown or not and should not delve into the merits of the claim. It has also been reiterated the legal position that while considering an application for condone delay, the Court cannot go into the merits of the appeal or suit and the condone delay application has to be tested only on whether the sufficient cause is shown or not.

26. In the light of the above and also in view of the foregoing discussion with regard to the cause projected by the petitioners having been found to be insufficient, I do not find any error committed by the Trial Court in dismissing the application for



condonation of delay. It is needless to state that admittedly, there are other suits pending between the parties and it shall be open to the petitioners to defend those suits on merits and in accordance with law, where all contentions can be agitated in a manner known to law.

27. In fine, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs.

13.02.2026

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Neutral Citation Case : Yes/No

Internet: Yes/No

Index : Yes/No

To:

- 1.The Principal District Munsif, Alandur.
- 2.The Sub-Registrar,
Sub-Registrar Office,
Alandur, Chennai – 600 061.
- 3.The Commissioner,
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P.B.BALAJI, J.,

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Pre-delivery order in
CRP. No.328 of 2025
and CMP. No.2111 of 2025

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