



C.M.P.No.28902 of 2024
in S.A.SR.12224 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 11.06.2026

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.P.No.28902 of 2024
in S.A.SR.12224 of 2023

1.G.Vijaya
2.Saravanan

... Petitioners

vs.

G.Kumaran

... Respondent

PRAYER: Civil Miscellaneous Petition is filed under Order 41 Rule 3 (A) of the Code of Civil Procedure, to condone the delay of 959 days in filing this second appeal.

For Petitioners : Mr.U.Karunakaran
For Respondent : Mr.S.Gurumoorthy

ORDER

This Civil Miscellaneous Petition has been filed seeking to condone the delay of 959 days in filing the second appeal.

2. In the additional affidavit filed in respect of the condone delay petition, it was stated by the 1st petitioner that the judgment and decree of the First Appellate Court was delivered on 05.12.2019 and she obtained certified copy on 17.03.2020. However, lock down was imposed due to covid pandemic on 15.03.2020 and hence, she was prevented from filing second appeal in time. It is further stated that the 1st petitioner was affected



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with covid twice and after recovery, she could not file second appeal immediately due to financial constraints. It is also stated that the 1st petitioner presented the second appeal as indigent person with a delay of 959 days in filing the second appeal on 27.01.2023.

3. The respondent filed his counter affidavit and opposed the condone delay petition on the ground that after disposal of the first appeal, the respondent filed execution petition in E.P.No.110 of 2021 and the petitioners entered appearance on 08.10.2021 in the execution petition. Later, delivery was ordered on 14.09.2022. However, the respondent could not take possession due to obstruction by the petitioners. It is also stated that the petitioners filed Section 47 application in E.A.No.4 of 2022 and in that application, the 1st petitioner was examined as PW.1 on 03.01.2023 and the said application was dismissed on 20.03.2024. Therefore, according to the learned counsel appearing for the respondent, the petitioners actively participated in the execution petition. In such circumstances, the reasoning given by the 1st petitioner in the additional affidavit in support of the condone delay petition, cannot be accepted.

4. As mentioned earlier, apart from the lock down due to covid pandemic and also illness, the 1st petitioner also pleaded indigency as a



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reason for her failure to file second appeal in time. It is also brought to my notice that the petitioners filed an application in C.M.P.No.6620 of 2024 seeking leave of the Court to sue as indigent person and the said application was allowed by this Court by order dated 29.10.2024. Since the petitioners were permitted to sue as indigent person by this Court as per the order passed in C.M.P.No.6620 of 2024, this Court cannot take a different view as far as indigency pleaded by the 1st petitioner. It is admitted by the learned counsel appearing for the respondent that the order passed by this Court on 29.10.2024 in C.M.P.No.6620 of 2024, has not been challenged by the respondent.

5. In view of the fact that the indigency pleaded by the 1st petitioner was already accepted by this Court, the reasoning given by the petitioners for the delay in filing the second appeal is acceptable.

6. Accordingly, C.M.P.No.28902 of 2024 stands allowed. The Registry is directed to number the second appeal, if it is otherwise in order.

11.06.2026

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S.SOUNTHAR, J.

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