WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-11-2026

CORAM

THE HON'BLE MR JUSTICE N. SATHISH KUMAR

AND

THE HON'BLE MR.JUSTICE GK.MUTHUKUMAAR

CMP No. 9451 of 2025
in CMP NO. 2989 OF 2022
in OSA NO. 340 OF 2008

B.Selvi

..Appellant(s)

Vs

1. P.Srinivasan
2. N.Dharmalingam
   (Notice to the 2nd Respondent dispense with)

..Respondent(s)

CMP No. 2989 of 2022

B. Selvi

..Appellant(s)

Vs

1. P. Srinivasan
2. N. Dharmalingam

..Respondent(s)

OSA No. 340 of 2008

Case QR

CNR:{HCMA011040292008}

P.Srinivasan

..Appellant(s)

Vs

1. B.Selvi
2. D.Dharmalingam

..Respondent(s)

https://www.mhc.tn.gov.in/judis

WEB COPY

CMP No. 9451 of 2025: Petition filed under Order XIV Rule VIII of OS Rules to condone the delay of 784 days in filing to restore the CMP No.29889 of 2022 before this Court.

CMP No. 2989 of 2022: Petition filed under Section 5 of Limitation Act to condone delay of 4811 of 4788 days in filing the Civil Miscellaneous petition to set aside the ex-parte order passed in O.S.A.No. 340 of 2008 dated 08.12.2008.

For Appellant(s): Mr.T. Karunakaran
For Respondent(s): Mr.R.Venkatesan for R1

Order

(Order of the Court was made by N.Sathish Kumar J.)

The present petition in C.M.P. No. 9451 of 2025 has been filed by the petitioner / 1st respondent seeking to condone a delay of 784 days in filing the application to restore C.M.P. No. 2989 of 2022 in O.S.A. No. 340 of 2008, which stood dismissed for non-prosecution vide order dated 21.12.2022.

2. Brief background facts of the case:

(i) The 1st respondent/appellant instituted a suit in C.S. No. 677 of 2004 seeking specific performance against the petitioner herein. In the said suit, the petitioner was set ex-parte, and vide judgment and decree dated 07.07.2007, the trial court dismissed the suit in part regarding specific performance, decreeing it only for the refund of the advance amount.

(ii) Aggrieved by the refusal of specific performance, the 1st respondent filed an appeal before this Court in O.S.A. No. 340 of 2008. In the appeal as well, the petitioner was set ex-parte, and a decree for specific performance was

https://www.mhc.tn.gov.in/judis

WEB COPY

passed in favor of the 1st respondent vide judgment and decree dated 08.12.2008.

(iii) Subsequently, the 1st respondent filed M.P.No.1 of 2010 seeking modification to comply with the decree in O.S.A.No.340 of 2008 and the said petition was allowed on 25.06.2010.

(iv) The petitioner asserts that she had no knowledge of any of these proceedings until receipt of notice in the execution proceedings in E.P.No.119 of 2019. Upon receiving notice, she engaged an advocate; however, owing to severe health issues arising from COVID-19 complications and a breakdown in communication with her erstwhile counsel, she was set ex-parte in the execution proceedings on 06.08.2021.

(v) Thereafter, with great difficulty, the petitioner engaged new counsel and filed C.M.P. No.2989 of 2022 to set aside the ex-parte order, accompanied by a delay of 4,811 days. However, upon engaging present counsel, the petitioner came to know that petition in C.M.P.No.2989 of 2022 had also been dismissed for non-prosecution on 21.12.2022.

(vi) Under these circumstances, the petitioner has filed this petition in C.M.P.No. 9451 of 2025 to condone the delay of 784 days in seeking restoration of C.M.P.No. 2989 of 2022.

3. Counter has been filed by the first respondent stating the delay is unexplained and that the petitioner's claims regarding her deceased former counsel, Mr. C. Duraipandian, are false since no vakalat was ever filed by him

https://www.mhc.tn.gov.in/judis

WEB COPY

in the suit or appeal. Furthermore, the first respondent contends that the petitioner never appeared or filed a written statement, took contradictory stances regarding service and counsel communication, and was validly served with execution notices in E.P. No. 119 of 2019 at the suit property in October 2019. Contending that the petitioner's sole intent is to delay execution and cause wrongful loss, seeks to dismiss the petition with exemplary costs.

4. Heard both sides and perused the materials placed on record.

5. It is a well-settled proposition of law that the term *"sufficient cause"* under Section 5 of the Limitation Act, 1963, must receive a liberal construction to advance substantial justice. Where technical considerations and substantive justice are pitted against each other, the cause of substantive justice deserves preference. A litigant should not ordinarily be shut out from contesting a matter involving valuable rights over immovable property merely on account of procedural default or inadvertence/omission of counsel, provided the delay is not *mala fide* or deliberate. In a suit involving real property, the Hon'ble Supreme Court time and again had condoned a prolonged delay where the party was set *ex-parte* due to advocate negligence, holding that an opportunity must be given to contest valuable property rights on merits. [see *M.K.Prasad vs. P.Arumugam* reported in *(2001) 6 SCC 176* and *Rafiq and another vs. Munshilal and another* reported in *1981 AIR 1400]*

6. In the case at hand, the affidavit filed in support of the petition clearly demonstrates that as soon as genuine knowledge was acquired, the petitioner

https://www.mhc.tn.gov.in/judis

WEB COPY

has retained proper counsel retained and immediate steps were taken by the petitioner. Now, the petitioner/defendant in order to show his bonafide is also willing to deposit the advance amount along with interest @24% p.a., said to have been received on the date of agreement of sale. Though various allegations were set out in the counter affidavit, considering the above aspect and other severe health reasons set out in the affidavit arising out of COVID-19 complications, and recognising that substantial property rights of the parties are at stake, this Court finds that the petitioner has demonstrated sufficient cause to afford an opportunity to contest the matter on merits.

7. In view of the above, this Court is satisfied with the reasons stated in the affidavit filed in support of the petition and the delay of 784 days in filing the restoration petition is hereby condoned. Accordingly, the petition in C.M.P. No. 9451 of 2025 stands allowed and the petition in CMP.No.2989 of 2026 stands restored on its file.

8. Registry is directed to list the petition in CMP.No.2989 of 2022 in OSA No. 340 of 2008 on 04.12.2026.

(N.S.K.,J.) (G.K.M.,J.)
16-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
dhk

https://www.mhc.tn.gov.in/judis

WEB COPY

N.SATHISH KUMAR J.
AND
GK.MUTHUKUMAAR J.

dhk

CMP No. 9451 of 2025
in CMP NO. 2989 OF 2022
in OSA NO. 340 OF 2008

16-11-2026

https://www.mhc.tn.gov.in/judis