WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 17-11-2026**

CORAM

**THE HON'BLE MRS.JUSTICE N. MALA**

**CMA No. 1195 of 2024 & CMP.No.1065 of 2024**

*CNR: {HCMA011293582023}*

1. S. Jayaraman
   S/o. Srinivasan Nainar, No.23, Thadalan Kovil North Street, Seerkali Town and Taluk.
2. J.Jaishankar
   S/o. Jayaraman, No.23, Thadalan Kovil North Street, Seerkali Town and Taluk.

3. Umamaheswari
   W/o. Prabakaran, D/o. Jayaraman, Kadakkam VIllage, Maiyiladuthurai Taluk.

..Appellant(s)

Vs

1. R. Rajkumar
   S/o. S.Ramakrishnan, Res. at No.71, Nethaji Street, Akkoor Kamarajapuram, Tharangambodi Taluk, Maiyiladuthurai.
2. R.Ramamirtham Ammal
   W/o. S.Ramakrishnan, Res. at No.71, Nethaji Street, Akkoor Kamarajapuram, Tharangambodi Taluk, Maiyiladuthurai.

3. J.Kaliyamurthy
   S/o. S.Jayaraman, Res. at No. 23, Thadalan Kovil Street, Seerkali Town and Taluk.

4. J.Govindaraj
   S/o. S.Jayaraman, Res. at No. 23, Thadalan Kovil Street, Seerkali Town and Taluk.

..Respondent(s)



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

WEB COPY

Prayer : Civil Miscellaneous Petition filed under Order 43 Rule 1 (u) of CPC to set aside the order and decree made in IA No. 1 of 2022 in AS No. 5 of 2014 on the file of the Additional District Judge, Mayiladuthurai, dated 03.03.2023.

For Appellant(s): Mr.A.Ganapatheeswaran

For Respondent(s): Mr.L.S.M.Haan Fizal
for Mr.K.Arunagiri – R1 & R2

**JUDGMENT**

This Civil Miscellaneous Appeal has been filed challenging the Order dated 03.03.2023 in I.A.No.1 of 2022 in A.S.No.5 of 2014 dismissing the application filed under Order 41 Rule 19 of CPC filed for restoring the appeal which was dismissed for default on 30.09.2019.

2. The respondent in the appeal filed a suit for partition in O.S.No.49 of 2010 before the Principal Sub Court, Myladuthurai. In the suit, a preliminary decree for partition was passed on 08.12.2026 against which the petitioners preferred an appeal in A.S.No.5 of 2014 before the Additional District Judge, Myliladuthurai. When the appeal was posted for hearing on 30.09.2020, there was no representation for the petitioners. Therefore, the appeal was dismissed for non prosecution.



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

WEB COPY

3. The appellants, thereafter filed the restoration and reopen petition invoking Order 41 Rule 19 CPC on 30.10.2019, citing the ill health of the third petitioner as the reason for their non-appearance.

4. The respondents filed detailed counter denying the averments made in the application. The respondents also contended that proper reasons for the delay of 2 ½ years in filing the application were not assigned and hence, prayed for dismissal of the application.

5. The learned Additional District Judge, on consideration of the pleadings, dismissed the said application on the ground that the appellants had failed to explain the delay in proper manner.

6. Aggrieved by the dismissal of the said application, the appellants have filed the present appeal.

7. The learned counsel for the appellants submitted that there is no delay in filing the application, since the application to restore the appeal was filed within 30 days. The learned counsel for the appellants further submitted that the appellate Court took the last date of representation for calculating the delay and hence, committed an error in dismissing the application, which was filed well within time.



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

WEB COPY

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

9. In the suit filed by the respondent for partition in O.S.No.49 of 2010 on the file of the Sub Court, Myladuthurai a preliminary decree was passed on 07.08.2012. The appellants preferred the first appeal in A.S.No.5 of 2014 before the Additional District Judge, Myladuthurai. When the appeal was posted on 30.09.2022, there was no representation for the appellants. Therefore, the learned Judge dismissed the appeal for non prosecution. The third appellant filed an application to restore the appeal citing her ill health as the reason for their non appearance. According to the appellants counsel, even though the application was filed on 30.10.2019, i.e., within 30 days from the date of dismissal of the appeal on 30.09.2019, the trial Court, erroneously found that the appeal was filed on 25.04.2022 and dismissed the application on the ground that the delay of 2 ½ years was not properly explained.

10. A perusal of the copy of the decree in I.A.No.1of 2022 in A.S.No.5 of 2014 shows that the appeal was dismissed for non prosecution on 30.09.2019 and the application to restore the appeal was filed on 30.10.2019. Thereafter, it was represented on 28.02.2022, 16.03.2022, 20.04.2022 and on 25.04.2022. From the decree copy, it is clear that the appellants had originally filed the application within time and thereafter represented the papers on various dates.



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

WEB COPY

The trial court erroneously took the last date of representation as the date of filing and therefore, committed an error in finding that there was a delay of 2 ½ years in filing the application to restore and rehear the appeal. Since, the appellate Court committed a factual error in calculating the limitation, the dismissal Order cannot be sustained.

11. It is relevant to note here that subsequent delay in representation is attributed to the COVID period and therefore, the delay in representation also justifiable. The Honourable Supreme Court in a suo motu Writ Petition No.3 of 2020, dated 10.01.2022, excluded the period between 15.03.2020 to 28.02.2022 for the purpose of calculating the period of limitation. The first appellant Court miserably failed to consider these aspects and dismissed the application on the ground that the delay was not properly explained. In the factual matrix of this case, this Court finds that the impugned Order of the appellate Court cannot be sustained and hence it is set aside. The appeal A.S.No.5 of 2014 is restored on the file of the Additional District Judge, Mayiladuthurai for fresh consideration on merits.

12. Accordingly, the Civil Miscellaneous Appeal allowed. Since the appeal is of the year 2014, the lower appellate Court is directed to hear the appeal and dispose of the same on merits and in accordance with law, within a



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

WEB COPY

period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

**17-11-2026**

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

vrc

To

1. The Additional District Judge,
Mayiladuthurai.

2. The Sub Court, Mayiladuthurai.



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

WEB COPY



**N.MALA, J.**

vrc

**CMA No. 1195 of 2024**

**17-11-2026**



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