



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 02.12.2025

Order pronounced on : 09.01.2026

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.3197 of 2025
& CMP.No.17747 of 2025

J.Kulasekaran

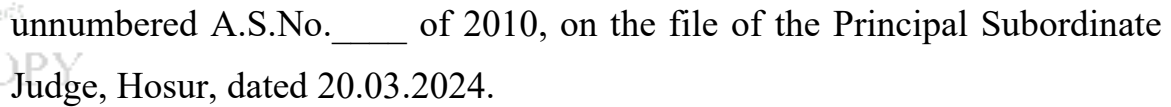
... Petitioner

Vs.

1.K.M.Yella Reddy
2.Radhamma
3.Dhanalakshmi
4.Padmamma
5.Manjunath
6.Kalaimagal Sabha
Represented by its Special Officer
and Official Receiver
1.Nagasubramaniam
2.K.C.Kadhirvelu
3.Navaneethakrishnan
Having their registered office at
No.67, Pudupallipalayam,
Kumarapalayam – 638 183.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order in I.A.No.35 of 2018 in I.A.No.70 of 2010 in



For Respondents : Mr.R.Jayaprakash for RR2 to 5
R1 died
R6 Not ready in notice

ORDER

The order of the First Appellate Court, condoning the delay of 116 days in filing an application under Order IX Rule 9 of CPC, is under challenge in the present revision petition.

2.I have heard Mr.V.Raghavachari, learned Senior Counsel for Mr.Sunny Shren Akara, learned counsel for the petitioner and Mr.R.Jayaprakash, learned counsel for the respondents 2 to 5.

3.Mr.V.Raghavachari, learned Senior Counsel appearing for the revision petitioner would submit that the First Appellate Court has erroneously exercised discretion to condone the delay of 116 days, when the respondents had not assigned any cogent reasons explaining the delay. The



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learned Senior Counsel would further state that merely because a liberal approach has to be adopted while considering an application under Section 5 of the Limitation Act, it does not mean that the condonation can be ordered at the expense of and prejudice to the other side. The learned Senior Counsel would further state that at every stage, there has been a delay on the side of the respondents and the same has not been taken note of by the First Appellate Court and even the application, which has been filed with a delay of 162 days, is only an application to set aside.

4.Mr.V.Raghavachari, learned Senior Counsel would point out that as against the judgment and decree of the trial Court, the respondents herein preferred a First Appeal along with an application for condonation of delay of 149 days. The said application in I.A.No.70 of 2010 came to be dismissed on 30.08.2010 for non payment of batta. In order to restore the said I.A.No.70 of 2010, I.A.No.57 of 2013 had been filed for condonation of delay of 622 days. The said application came to be allowed by the First Appellate Court and the respondents were directed to pay batta on three occasions. Despite sufficient opportunities granted to the respondents, the respondents again failed to pay batta and I.A.No.70 of 2010 was once again



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dismissed for non prosecution. In order to restore the said application, I.A.No.35 of 2017 was filed again with a delay of 116 days.

5.It is therefore the contention of Mr.V.Raghavachari, learned Senior Counsel that the law cannot come to the rescue of such litigants, who are careless and non diligent in conducting the proceedings before the Court of law. He would state that the affidavit filed in support of the application in I.A.No.35 of 2017 also does not assign any valid reasons, excepting for stating that the 1st petitioner's wife had been admitted in the hospital and that he had to look after her on 16.09.2017 as an attender and there is no reason has to why there has been a delay in even filing the application under Order IX Rule 9 of CPC.

6.The learned Senior Counsel has relied on the decision of the Hon'ble Supreme Court in *Rajneesh Kumar and another Vs. Ved Prakash* in *SLP.(Civil).No.935-936 of 2021*, dated 21.11.2024, where the Hon'ble Supreme Court held that even if the lawyer was careless or negligent, that by itself would not constitute a ground to condone the delay, as a litigant owes a duty to be vigilant of his own rights and he is expected to be equally



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vigilant about judicial proceedings pending in the Court, initiated at his instance. He would also place reliance on the decision of this Court in *Tamil Nadu Mercantile Bank Limited (Represented by its Chairman), Tuticorin Vs. Appellate Authority under the Tamil Nadu Shops and Establishments Act, Madurai and another*, reported in 1989 SCC Online Mad 256, where the Hon'ble Division Bench of this Court held that if a litigant comes to Court after considerable delay for which he has no explanation, he has to blame himself and cannot make a complaint that the cause of justice has been defeated because of his own delay and that such litigant cannot be permitted to take advantage of his own fault and demand a premium therefor. The Division Bench also held that when the explanation for the delay is wanting, then there no cause for the delay and consequently, it can never be treated as sufficient cause.

7.Per contra, Mr.Jayaparakash, learned counsel appearing for the respondents 2 to 5 would submit that the application was initially dismissed only on account of non payment of batta, in which the respondents had no role to play and when it was the fault of the counsel, the litigant should not



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be made to suffer. He would place reliance on the orders passed by the Division Bench in *G.Nagaraj Vs. R.J.Anandmul and another*, reported in (2023) 4 L.W 520, as well as the orders passed by me in the following revisions viz., *K.S.Venkataraman Vs. Jayalakshmi* in CRP.No.2468 of 2024 dated 04.07.2024, *Singaravelu Vs. G.Soundarajan* in CRP.No.1252 of 2024 dated 26.08.2025 and *Chokkammal and others Vs. R.Natarajan* in CRP.No.4307 of 2025 dated 28.10.2025, where I had condoned the delay, adopting a liberal approach.

8.I have carefully considered the submissions advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondents 2 to 5.

9.As already discussed, the revision petitioner, as plaintiff, filed the suit in O.S.No.69 of 2004 for specific performance of an agreement dated 28.06.1983. The said suit came to be decreed, as against which, an appeal was preferred, along with an application for condone delay. The said application to condone delay came to be dismissed, on the ground that steps



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were not taken in the application, despite several opportunities given to the respondents. Yet another application was taken out for restoring the said application that was dismissed for default, with a delay of 622 days. The First Appellate Court allowed the application and despite restoration of I.A.No.70 of 2010, once again the respondents did not take steps which resulted in dismissal of the said application in I.A.No.70 of 2010 for the second time. Yet another application thereafter was filed in I.A.No.35 of 2018, again with a delay of 116 days to restore I.A.No.70 of 2010.

10.As rightly contended by Mr.V.Raghavachari, learned Senior Counsel, the affidavit does not disclose even a single reason, leave alone satisfactory explanation for the delay of 116 days in seeking to restore I.A.No.70 of 2010. The only reason stated is that the first petitioner's wife was hospitalized on 16.09.2017 and therefore, he could not appear on that day. There is no explanation as to why steps were not taken prior to 16.09.2017 or as to why thereafter the petitioner did not follow up the matter diligently which resulted in a further delay of 116 days in restoring the application I.A.No.70 of 2010 to file.



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11.The ratio laid down by the Division Bench of this Court would squarely apply in all force, to the facts of the present case. When the petitioner seeking condonation of delay does not offer any explanation, then there can be no cause, much less, sufficient cause. Equally, the blame cannot be shifted to the counsel, stating that steps were not taken by the counsel and therefore, the party should not suffer for the fault of the counsel. The Division Bench has answered this aspect as well, by holding that a person who has lost his right to have the matter considered on merits because of his own inaction, cannot contend that the delay is non deliberate and that substantial justice deserves to be preferred over technical considerations. The earlier conduct of the respondents also cannot be totally ignored as well.

12.In view of the earlier discussion, it can be seen that at every stage, right from filing of the appeal, there has been a delay on the part of the respondents. Therefore, as held by the Hon'ble Supreme Court in *Rajneesh Kumar's case* as well, a litigant who is not vigilant of his own rights, cannot throw the entire blame on the head of the advocate and seek relief by way of condonation of delay.



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13. With regard to the decisions on which, the learned counsel for the respondents has placed reliance on, in the case of *K.S.Venkatraman*, I condoned the delay under Section 5 of the Limitation Act, on account of non payment of costs ordered by the trial Court, exercising discretion in favour of condonation of delay. It is under such circumstances, I imposed additional costs. In *K.Singaravelu's case*, that was a case where the appeal was filed and there was a delay of 2171 days in representing the appeal and noticing that the delay had been condoned and the appeal was also numbered and was ripe for arguments, under such circumstances, I did not interfere with the order passed which too was only a delay in representing the appeal papers. In *Chokkammal's case*, though the delay was 1015 days, the petitioner was aged 80 years and in fact, there was no serious opposition for the delay being condoned and across the bar, the respondents' counsel fairly conceded that the appeal could be disposed of expeditiously. Therefore, none of these decisions would come to the rescue of the respondents.

14. As I have already found that the respondents have not made out any cause, much less, sufficient cause. The First Appellate Court clearly fell



in error in condoning the delay. The argument that the delay is only 116 days cannot be countenanced. Though such a contention may sound attractive at first blush, it is settled law that the length of delay is immaterial and the *sine qua non* is establishment of sufficient cause for the delay. Therefore, even if the delay is minimal, but the applicant is not able to show sufficient cause, then there is no question of the Court proceeding to condone the delay. In such view of the matter, I am inclined to set aside the order of the Court below, condoning the delay of 116 days.

15. In fine, the Civil Revision Petition is allowed and the order in I.A.No.35 of 2018 in I.A.No.70 of 2010 in unnumbered A.S.No.____ of 2010, on the file of the Principal Subordinate Judge, Hosur, dated 20.03.2024 is set aside. No costs. Connected Civil Miscellaneous Petition is closed.

09.01.2026

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To
The Principal Subordinate Judge, Hosur.

P.B. BALAJI,J.

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Pre-delivery order made in
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