



**A.No.5737 of 2025
in
T.O.S.No.20 of 2021**

WEB COPY

**MASTER
24.02.2026**

ORDER

1. This is an application filed by the applicant/plaintiff to condone the delay of 919 days in filing an application to set aside the order of dismissal of T.O.S No.20 of 2021. The applicant states that originally he filed O.P.No.883 of 2019 which was converted into T.O.S.No.20 of 2021 which was dismissed for non-prosecution on 20.02.2023. The applicant further stated that both she and her erstwhile counsel were not aware of the dismissal of the suit and she came to know of the dismissal only on 05.08.2025 during her cross examination as a witness in E.P.No.1177 of 2022 before the 15th Court of Small Causes, Chennai proceeding related to and involving the same property mentioned in the suit. Immediately the applicant contacted her erstwhile counsel who verified and confirmed the order of dismissal and the non-appearance on 20.02.2023 is beyond his control and not contributable to any wilful default or negligence on his part. The reasons for the non appearance is that the junior counsel attached to the office of his erstwhile counsel who was incharge of the matter failed to attend the case and had furnished false information to the office leading his erstwhile counsel's office to believe that the suit remained pending. Only after the cross examination of the applicant in another proceedings it came to their knowledge and immediately he has filed the application to set aside the order of dismissal dated 20.02.2023 along with this application to condone the delay of 919 days which is purely due to lack of communication between the applicant and his counsel and the applicant's own challenges in managing concurrent legal proceedings. The suit involves



substantial issues of succession and property rights under a valid Will, with the properties forming the core of the deceased estate bequeathed to the applicant and so the present application is to be allowed.

2. The 1st respondent filed his counter stating that the present application seeking condonation of inordinate and unexplained delay of more than two years in filing an application to restore the T.O.S by attempting to shift the entire blame on his erstwhile advocate is a clear abusive process of law. When it is a settled law that a litigant has an independent and continuing duty to monitor his own case irrespective of whether he is represented by an advocate or not, the applicant cannot be permitted to shift the entire blame on his erstwhile advocate. Furthermore, the applicant continues to retain the very same erstwhile advocate in several other matters before this Hon'ble Court in C.S.No.420 of 2016, C.S.No.290 of 2016 and C.S.No.291 of 2019 and the applicant was actively appearing in person in CrI.O.P.No.6918 of 2022 relating to the alleged theft of his Father's Will till 28.02.2024. The contention of the applicant that he is not aware of the dismissal of the suit cannot be accepted. The delay of 919 days not properly explained and the bald allegations against the counsel is unsupported by any affidavit from the said advocate or junior and so, this application is to be dismissed.

3. The 2nd respondent filed his counter stating that the applicant has given a reason that the delay occurred due to lack of communication between himself and his counsel which would clearly show that the applicant is lethargic in prosecuting the above suit. Further, the applicant has not properly explained the inordinate delay of 919 days and has not substantiated his contention that between 2023 to 2025 he was pre-occupied with multiple litigations by producing any material evidence before this court. Further, the delay days is also wrongly calculated and the actual number of days of delay is 1284 days. Hence, this application is liable to be dismissed.



4. Now, the point for consideration is whether the delay of 919 days is to be condoned or not?

5. Heard both side counsels. Materials on record perused. The learned counsel for the 1st respondent relied upon the order of our Hon'ble High Court in **Ashok Kumar –Vs-- K.S.M.Mohammad Husain** CRP Nos.3471, 3473, 3474 & 3476 of 2025 & CMP Nos.18818, 18821, 18823 & 18836 of 2025 dated 26.09.2025 wherein the Hon'ble High Court citing the decision in **Chitravel and Another –Vs-- Jothimani, reported in 2024 (2) CTC 197** wherein it is held that "13. *Coming to the reason cited by the respondent in his application for condonation of delay of close to 5 years, they are that the trial Court Advocate did not inform him about the passing of the decree. Clearly, the respondent has played a blame game, accusing his trial Court Advocate of not informing him about the proceedings, especially, the factum of the suit being dismissed, after trial. As already referred herein above, this Court has consistently held that the negligence of the Advocate cannot be held to be a sufficient or just cause to entertain a condonation of delay application, as equally a duty is cast on the litigant, who is supposed to diligently follow up his case or her case with the lawyer. One another alarming factor is that such affidavits accusing lawyers is sadly gaining popularity. It is not a healthy trend. Behind the back of the lawyer who conducted the case, allegations are made in the affidavit, by engaging another counsel and citing the said reason that the Advocate or the Advocate's clerk did not inform the party, applications are being routinely filed before the court, seeking condonation of delay. Only in order to assess the bonafides or truth in the averments and allegations made in this regard, the Courts are constrained put riders on such applications by insisting of production of any complaint made by the litigant against the Advocate before the Bar Council. Practically, it is understandable that in all cases it may not be possible for the*



litigant to approach the Bar Council and file complaint against the Advocate for various reasons. Even lawyers, who are engaged subsequently, would be embarrassed to take such action. However, the applicant casually blames the counsel who conducted the trial, especially behind the Counsel's back and gets a favourable order from the Court, condoning huge and inordinate delay. It is one thing to state that no prejudice would be caused to the petitioners if the delay is condoned and the appeal is heard on merits. When such a reason is thrust before the Court, it virtually goes unchallenged as the opposite party is not privy to the advocate-client relationship of the applicant. However, when the applicant is unable to show any just or sufficient cause and the only reason cited for the delay of approximately 5 years is blaming his advocate, then the Court should not entertain such an application." and taking into consideration the principles enunciated by the Hon'ble Supreme Court had dismissed the Civil Revision Petitions and refused to condone the delay of 955 days.

6. The applicant has filed O.P.No.883 of 2019 for grant of letters of administration with the Will of Late.Mr.C.S.Thirunavukkarasu which was converted into T.O.S on appearance of the respondents and on filing of caveat. Thereafter, the matter was listed on 15.07.2022, 29.07.2022, 23.08.2022, 06.09.2022, 16.09.2022, 27.10.2022, 12.12.2022 for serving Form 70A notice to the defendants and on 20.02.2022 the case was listed under the caption "default list". Since, there was no representation for the applicant on 20.02.2022. The suit was dismissed for default.

7. The present application for condonation of delay was filed on 25.09.2025. One of the two main contentions raised by the applicant is that he was not informed and appraised by his erstwhile counsel that the suit posed a risk of dismissal on 20.02.2023 and that he was pre-occupied with multiple litigations including E.P.No.1177 of 2022,



C.S.Nos.290 of 2016, 420 of 2016 and 291 of 2019 before this Court. From this contention of the applicant himself it is seen that the applicant is following the above said cases and no reason has been stated by the applicant why he has not followed the above suit in T.O.S.No.20 of 2021 in a similar manner as acted upon by him in the above mentioned legal proceedings. It is settled law that the applicant cannot mechanically blame his previous counsel to justify inaction on his part. This court is obliged to refer to the decision in **Rajneesh Kumar and Another ---Vs--- Ved Prakash, 2024 (SCC) Online 3380** wherein the Hon'ble Supreme Court held that "a litigant cannot take shelter behind the alleged fault of the counsel without himself exhibiting due diligence. Vague allegations against the advocate unsupported by material, cannot constitute sufficient cause. Courts cannot condone inordinate and unexplained delay on such bald assertions.

8. The above ratio squarely applies to the facts of the present case where the petitioner has not demonstrated diligence nor given any specific or acceptable explanation. The delay is inordinate unexplained and clearly negligent. Moreover, no documentary or oral evidence is produced before this court to show that the petitioner/applicant followed up with his erstwhile counsel, no correspondence, no affidavit from the previous counsel and no records are filed to substantiate the allegations made by the applicant. Furthermore, the applicant has remained completely inactive for nearly three years offering only a vague and bald allegations against his erstwhile counsel and the applicant herein has also admitted himself that there is some lapse on his side in following the case. As rightly pointed out by the learned counsel for the respondents 1 & 2 the applicant has not made out any sufficient cause to condone the inordinate delay of 919 days in filing the set aside application.

In view of the above discussion this court is of the opinion that the



application lacks merits. Accordingly, the application is dismissed. No cost.

WEB COPY

MASTER