



*C.M.P.(MD)No.4054 of 2025
in S.A(MD)No.300 of 2013*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.04.2026

Pronounced on : 30.04.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.4054 of 2025
in
S.A(MD)No.300 of 2013

1.Suryanarayanan

2.Madhuram Ammal

3.Jothi Lakshmi

4.Minor.Jaya Surya

: Petitioners

(Minor 4th petitioner represented
by her mother 3rd petitioner)

Vs.

1.Singili Naiker Dwadai Kattalai Chathram,
2A Melarathaveethi, Virudhunagar,
rep.by its Executing Officer,
Arulmigu Chokkanatha Swamy Temple,
Virudhunagar.

2.Joint Sub Registrar No.2,
Virudhunagar.



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3. Assistant Commissioner,
HR & CE Department,
Virudhunagar.

: Respondents

PRAYER in C.M.P(MD)No.4054 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 65 days in filing the petition to set aside the order, dated 28.10.2024 made in S.A(MD)No.300 of 2013 and restore the second appeal in S.A(MD)No.300 of 2013.

PRAYER in S.A(MD)No.300 of 2013 : Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree, dated 02.03.2006 made in A.S.No.37 of 2004 on the file of the Subordinate Judge at Virudhunagar, confirming the judgment and decree of District Munsif at Viruhunagar in O.S.No.117 of 2001 made on 11.02.2024.

For Petitioners : Mr.S.Siva Thilakar,

For Respondents : Mr.P.Mahendran, for R1.

: Mr.A.Oliraja,
Government Advocate (Civil Side) for R2 & R3.

ORDER

The Civil Miscellaneous Petition has been filed, invoking Section 5 of Limitation Act, to condone the delay of 65 days in filing the petition to restore the second appeal in S.A(MD)No.300 of 2013, which was dismissed for default on 28.10.2024.



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2.The first petitioner has filed an affidavit on his behalf and on behalf of the other petitioners in support of the delay condonation petition. In the affidavit, the petitioners have narrated about the merits of the main case and in para No.7, it has been stated that after remand by the Hon'ble Supreme Court, the second appeal was again listed for hearing and this Court was pleased to send notice to the parties and thereafter, the case was listed for the hearing on 28.10.2024 and on that day, the counsel on record did not appear and that therefore, the second appeal was dismissed for default and that their counsel was under impression that the notice was not served to the parties and therefore, failed to appear before the Court; that there occurred a delay of 65 days in filing the restoration petition and that the petitioners will be put to irreparable loss and injury, which cannot be compensated by any means unless the delay is condoned.

3. The first respondent/plaintiff filed an elaborate counter affidavit touching the merits of the main case in most of the passages and in pare No.24, it has been stated that the delay condonation petition has been filed



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without any bonafide reasons; that the petitioners have approached this Court through the same counsel, who has appeared earlier on their behalf and the same would go to prove that in order to divert the Court proceedings, the petitioners have also reported through their counsel stating that there are no instructions resulting in which the main appeal has been dismissed for default; that the petitioners have filed the present petition to condone the delay without any explanation for such delay and no bonafide reasons were given; that the Hon'ble Supreme Court has again and again held that the parties should explain each and every day delay; that the petitioners have to give bonafide and convincing reasons, even if there is a delay for shorter period and that therefore, the petition is liable to be dismissed.

4.The first respondent/plaintiff filed the suit in O.S.No.117 of 2001 before the District Munsif Court, Virudhunagar, claiming permanent injunction restraining the defendants 1 and 2 from alienating or encumbering the suit property and for permanent injunction restraining the third defendant from registering any document in respect of the suit property without getting no objections certificate from the fourth respondent therein and after trial, the



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suit was decreed on 11.02.2004 as prayed for as against the defendants 1 to 3.

Challenging the said judgment and decree, the defendants 1 and 2 filed an appeal in A.S.No.37 of 2004 and the learned Subordinate Judge, Virudhunagar, passed the judgment and decree, dated 02.03.2006, dismissing the appeal and thereby confirmed the judgment and decree of the trial Court. Pending first appeal, the second defendant had died and his legal heirs got themselves impleaded as appellants 3 to 5. Aggrieved by the dismissal of the first appeal, the appellants in A.S.No.37 of 2004 have filed the second appeal in S.A(MD)No.300 of 2013 before this Court.

5. It is evident from the records that the said appeal in S.A(MD)No.300 of 2013, vide judgment dated 20.06.2013 came to be allowed. Challenging the said judgment dated 20.06.2013, the plaintiff filed Civil Appeal in C.A.No.141 of 2020 and the Hon'ble Supreme Court by setting aside the judgment of the High Court, remitted the matter back to the High Court for fresh consideration of the second appeal. In pursuance of the said directions, the second appeal was restored to file.



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6. When the matter was taken up on 28.10.2024, the learned Judge of this Court by recording that none appeared on behalf of the appellants and taking note of the fact that the appellants' counsel reported no instructions and despite printing the names of the appellants, there was no representation for them, proceeded to dismiss the appeal for default.

7. The petitioners/appellants have filed the petition to restore the second appeal, which was dismissed for default on 28.10.2024, along with the present application to condone the delay of 35 days in filing the restoration petition.

8. As rightly pointed out by the learned counsel for the petitioners, the learned Judge of this Court while dismissing the second appeal for default, has observed that in the event of the appellants appearing in the matter through the counsel later, the said application shall be considered for restoration of the case positively.



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9. The learned counsel for the respondents/plaintiffs would mainly contend that the petitioners have been prosecuting the proceedings from 2001 onwards and thereby preventing the plaintiffs from enjoying the fruits of the decree that was granted by the trial Court and confirmed by the first appellate Court. But the learned counsel for the petitioners would contend that, in the civil appeal, the Hon'ble Supreme Court, while remitting the matter, has granted liberty to the parties to file additional documents, which were sought to be placed by an application I.A.No.186620/2019 and in event the said documents were accepted, an opportunity should be given to the defendants to file reply evidence in support of their case and also observed that Status Quo already granted shall continue till the disposal of the second appeal.

10. Taking into consideration the above factors and having regard to the length of the delay, this Court is of the view that the delay in filing the restoration petition deserves to be condoned. However, at the same time, bearing in mind the conduct of the petitioners in having reported “no instructions” even after the remand by the Hon’ble Supreme Court, this Court deems it appropriate to mulct them with costs.



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11. In the result, the Civil Miscellaneous Petition will be allowed on payment of cost of Rs.5,000/- (Rupees Five Thousand Only) to the respondent/plaintiff on or before 03.06.2026, failing which, the petition shall stand dismissed automatically without further reference of this Court.

12. Post the matter on 04.06.2026, for reporting compliance.

30.04.2026

NCC : Yes /No
Index : Yes / No
Internet : Yes / No
das



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To

- 1.The Subordinate Judge at Virudhunagar.
- 2.The District Munsif at Viruhunagar.
- 3.The Joint Sub Registrar No.2,
Virudhunagar.
- 4.Assistant Commissioner,
HR & CE Department,
Virudhunagar.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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in
S.A(MD)No.300 of 2013

Dated: 30.04.2026