



*C.M.P.(MD)No.3631 of 2025
in S.A(MD)No.SR 14880 of 2025*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.01.2026

Pronounced on : 28.01.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.3631 of 2025

in

S.A(MD)No.SR 14880 of 2025

M.Madasamy

: Petitioner/Appellant

Vs.

P.Murugan @ Murugaiah

Respondent/Defendant

PRAYER in C.M.P(MD)No.3631 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act., to condone the delay of 770 days in filing the second appeal against the judgment and decree made in A.S.No.133 of 2019, dated 13.10.2022 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.128 of 2015 on the file of the I Additional District Munsif, Tirunelveli, dated 11.01.2019.

PRAYER in S.A (MD) SR No. 14880 of 2025 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.133 of 2019, dated 13.10.2022 on the file of the Principal Sub Court, Tirunelveli,



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confirming the judgment and decree passed in O.S.No.128 of 2015 on the file of the I Additional District Munsif, Tirunelveli, dated 11.01.2019.

For Petitioner : Mr.S.Mahesh Babu,

For Respondent : Mr.P.Rajkumar.

ORDER

The above application has been filed under Section 5 of Limitation Act, to condone the delay of 770 days in filing the second appeal against the judgment and decree made in A.S.No.133 of 2019, dated 13.10.2022 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.128 of 2015 on the file of the I Additional District Munsif, Tirunelveli, dated 11.01.2019.

2.The appellant as plaintiff filed the suit in O.S.No.128 of 2015, on the file of the I Additional District Munsif, Tirunelveli, claiming the reliefs to declare that the suit property is belonging to the plaintiff and for consequential permanent injunction, restraining the defendant and his men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.



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3.The respondent/defendant filed a written statement and contested the suit. The learned I Additional District Munsif, Tirunelveli, after framing necessary issues and after full trial, passed the judgment, dated 11.01.2019, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.133 of 2019 and the learned Principal Sub Judge, Tirunelveli, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 13.10.2022, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff filed the present second appeal along with the above application to condone the delay of 770 days in filing the second appeal.

4. The case of the petitioner canvassed in the delay condonation petition is that after filing of the first appeal, the petitioner suffered heart disease and was taking treatment continuously and hence, he was not able to follow the first appeal; that the first appeal was heard and the same was dismissed on 13.10.2022, that the petitioner was taking treatment in Madurai Meenakshi Mission Hospital continuously and hence, he was not able to



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contact his Advocate and instructed him to apply for the copies of decree and judgment; that the petitioner underwent angio two times in the said hospital and is under medical care till now and hence, he was not able to take steps to file the second appeal in time; that the delay of 770 days in filing the second appeal is neither wilful nor wanton, but beyond the control and that the petitioner will be put to great hardship and loss, if the delay is not condoned.

5.The respondent filed a counter affidavit disputing the affidavit averments and further stated that there are concurrent findings of the fact by the Courts below against the petitioner; that the petitioner having suffered two reasoned judgments, has filed the present second appeal with an abnormal delay of 770 days, without assigning any valid, acceptable or *bona fide* reason; that the affidavit filed in support of the delay condonation petition does not disclose any sufficient cause as contemplated under Section 5 of Limitation Act; that mere bald and vague averments cannot constitute sufficient cause; that the proposed second appeal does not involve any substantial question of law and is devoid of merits and that therefore, the petition is liable to be dismissed.



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6. The only point for consideration is whether the delay of 770 days in filing the second appeal, challenging the judgment and decree made in A.S.No.133 of 2019, dated 13.10.2022 on the file of the Principal Sub Court, Tirunelveli, is liable to be condoned.?

7. Before proceeding further, it is necessary to refer to the decision in *Shankargir v. State of Madhya Pradesh and another*, rendered in Civil Appeal No.14613 of 2025, dated 05.12.2025, wherein the Hon'ble Apex Court expressed its dismay at the manner in which the High Court had condoned a delay of 1,612 days merely on the asking of the State Government. The Hon'ble Supreme Court reiterated that the law relating to limitation and condonation of delay is well settled and that the existence of "sufficient cause" must be carefully examined before exercising discretion to condone such delay.

8. In the case of *Thirunagalingam Vs. Lingeswaran and another* reported in *2025 Live Law SC 560*, the Hon'ble Apex Court reiterated the legal position that while considering the plea for condonation of delay, the



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first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay and the relevant portion is extracted hereunder :

“Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”

9. It is also necessary to refer the decision of Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** reported in **2024 SCC Online SC 3612**, wherein the Hon'ble Apex Court referred its earlier decision reported in **2024 SCC Online SC 489 [Union of India Vs. Jahangir**



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Byramiji Jeejeebhoy(D) through his legal heir], and the relevant passages are extracted hereunder :

5.1. In Union of India v. Jahangir Byramji Jeejeebhoy (D) through his legal heir, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

“24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

.....

26. The length of the delay is a relevant matter which the court must take into consideration while considering whether the delay should be condoned or not. From the tenor of the approach of the appellants, it appears that they want to fix their own period of



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limitation for instituting the proceedings for which law has prescribed a period of limitation. Once it is held that a party has lost his right to have the matter considered on merits because of his own inaction for a long, it cannot be presumed to be non-deliberate delay and in such circumstances of the case, he cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While considering the plea for condonation of delay, the court must not start with the merits of the main matter. The court owes a duty to first ascertain the bona fides of the explanation offered by the party seeking condonation. It is only if the sufficient cause assigned by the litigant and the opposition of the other side is equally balanced that the court may bring into aid the merits of the matter for the purpose of condoning the delay.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over



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the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

xxx xxx xxx

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.”

After referring to the above said decision, the Hon'ble Apex Court observed,



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'Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold.'

10. Bearing the above legal position in mind, this Court proceeds to consider the case on hand. As already pointed out, the reason assigned for the delay is that the petitioner was suffering from heart disease and, even during the pendency of the first appeal, he was not in a position to effectively pursue the said appeal.

11. No doubt, as rightly pointed out by the learned counsel for the petitioner, he produced two discharge summaries issued by the Meenakshi Mission Hospital, Madrai and whereunder it is evident that the petitioner was admitted on 19.02.2024 and discharged on 26.02.2024 and again admitted on



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14.11.2024 and discharged on 19.11.2024. Moreover, it is further evident that the petitioner was diagnosed to have coronary heart disease and was treated therefor.

12. As rightly pointed out by the learned counsel for the respondent, the petitioner has not chosen to mark or produce any medical records in support of the present application. Be that as it may, it is an admitted position that the petitioner had taken inpatient treatment only in June 2024 and again in November 2024, whereas the first appeal came to be dismissed as early as on 13.10.2022. The petitioner has not produced even an iota of material to demonstrate that he was suffering from heart disease from the year 2019 onwards or that he was undergoing continuous treatment during the year 2022, which prevented him from taking steps to file the second appeal.

13. The learned counsel for the respondent would submit that the petitioner's suit, seeking declaration and permanent injunction on the ground of a fraudulent and invalid sale deed, was dismissed after a full-fledged trial; that the appeal preferred by the petitioner was also dismissed; and that, having



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suffered two concurrent and reasoned judgments, the petitioner has filed the present second appeal with an inordinate delay of 770 days.

14. As rightly contended by the learned counsel for the respondent, the mere existence of heart-related ailments, by itself, does not constitute sufficient cause for condoning a delay of 770 days. It is not the case of the petitioner that he was continuously bedridden or that he was incapacitated to such an extent that he could not even contact his counsel and issue instructions for filing the second appeal.

15. As per the settled legal position referred to above, while considering an application for condonation of delay, the Courts should not embark upon an examination of the merits of the matter at the threshold. Consideration of merits is permissible only when the cause shown by the litigant for the delay and the objections raised by the opposite party are evenly balanced or stand on an equal footing.



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16. As already pointed out, the reasons canvassed by the petitioner, by themselves, cannot be taken as sufficient cause for condoning the delay and, in any event, the reasons so canvassed have not been substantiated by any acceptable material.

17. Considering the above, this Court has no hesitation in holding that the petitioner has not shown any sufficient cause for the inordinate delay of 770 days in filing the second appeal and as such, this Court concludes that the petition is devoid of merits and is liable to be dismissed.

18. In the result, the Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal is rejected at the SR stage itself.

28.01.2026

NCC : Yes /No
Index : Yes / No
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K.MURALI SHANKAR,J.

das

To

- 1.The Principal Sub Court, Tirunelveli.
- 2.The I Additional District Munsif, Tirunelveli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
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Dated: 28.01.2026