



*C.M.P.(MD)No.7429 of 2025
in S.A(MD)No.SR 27385 of 2025*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.01.2026

Pronounced on : 12.02.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.7429 of 2025

in

S.A(MD)No.SR 27385 of 2025

N.Kamatchi Maniyam

: Petitioner

Vs.

K.Annakamudrai

: Respondent

P.Chinnasamy Maniyam (died)

PRAYER in C.M.P(MD)No.7429 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 693 days in filing the second appeal in S.A(MD)No.SR 27385 of 2025.

PRAYER in S.A(MD)No.SR 27385 of 2025 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 23.01.2023 in A.S.No.22 of 2021 on the file of the learned Additional Sub Judge, Dindigul, reversing the judgment and decree, dated 25.06.2019 passed in O.S.No.351 of 2014 on the file of the Principal District Munsif Court, Dindigul.



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For Petitioner : Mr.N.Rahamadullah,
For Respondent : Mr.K.Vinoharan.

ORDER

The above application has been filed under Section 5 of Limitation Act, to condone the delay of 693 days in filing the second appeal, challenging the judgment and decree made in A.S.No.22 of 2021, dated 23.01.2023 on the file of the Additional Sub Court, Dindigul, reversing the judgment and decree, passed in O.S.No.351 of 2014, dated 25.06.2019 on the file of the Principal District Munsif Court, Dindigul.

2.The first respondent as plaintiff filed a suit in O.S.No.351 of 2014, claiming the reliefs to declare that the suit property is belonging to him and for consequential permanent injunction restraining the first defendant and his men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3.The petitioner/first defendant filed a written statement and contested the suit. The learned Principal District Munsif, Dindigul, after



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framing necessary issues and after full trial, passed the judgment, dated 25.06.2019, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.22 of 2021 and the learned Additional Subordinate Judge, Dindigul, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 23.01.2023, setting aside the judgment and decree of the trial Court and granted the reliefs of declaration and consequential permanent injunction as prayed for. Challenging the said judgment and decree, the first defendant has filed the present second appeal along with the above application to condone the delay of 693 days in filing the second appeal.

4.The case of the petitioner, as set out in the delay condonation petition, is that though the judgment and decree were passed against him, owing to his old age, he was unable to meet his counsel immediately. According to the petitioner, when he visited his counsel's office during the second week of November 2024, he came to know that the appeal had been allowed and that his counsel had passed away and, therefore, the disposal of the appeal was not intimated to him earlier. It is further stated that the



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petitioner thereafter contacted the junior advocate for filing a copy application and the same was filed on 16.11.2024 and the certified copies of the judgment and decree were made ready on 07.12.2024. The petitioner would further contend that though the copies were made ready on 07.12.2024, he was unable to engage the present counsel at Madurai immediately due to his age and paucity of funds and that only after mobilizing the necessary funds, he engaged the present counsel and filed the present second appeal. Thus, according to the petitioner, the delay is neither wilful nor wanton, but only due to the aforesaid bona fide reasons and that he would be put to serious hardship if the delay is not condoned.

5.The respondent/plaintiff filed counter affidavit disputing the affidavit averments and further stated that the second appeal was filed with an inordinate delay of 693 days; that the petitioner has not endeavoured to give even a single explanation as the reason for the huge delay; that the petitioner attempted to rely on the merits of the matter, which cannot be entertained at the stage of consideration of delay condonation petition; that the respondent filed the suit in O.S.No.351 of 2014 before the Principal District Munsif



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Court, Dindiful, for declaration and injunction with regard to the suit properties against the petitioner and deceased respondent Chinnasamy Maniyam; that the suit property was purchased by the respondent's father V.K.Karuppana Maniyam along with Chinnasamy Maniyam, vide sale deed, dated 21.12.1982 and after the demise of his father, he is continuing to be in possession and enjoyment of the properties; that since the petitioner started to interfere with the same in the year 2014, the above suit was filed; that the suit was dismissed vide judgment and decree dated 25.06.2019 and the respondent filed an appeal and the same was allowed on 23.01.2023; that the respondent has been enjoying the fruits of the decree for the past three years and only with an intention to again interfere with the respondent's peaceful possession and enjoyment of the suit property, the petitioner has come forward with the above second appeal along with the above application; that the petitioner failed to provide any explanation, much less a sufficient cause for the inordinate delay of 693 days in filing the appeal and that therefore, the above petition is liable to be dismissed.



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6. The only point for consideration is whether the delay of 693 days in filing the second appeal challenging the judgment and decree made in A.S.No.22 of 2021, dated 23.01.2023 on the file of the learned Additional Sub Judge, Dindigul, is liable to be condoned ?

7. At this juncture, it is necessary to refer the decision in ***Shankargir Vs. State of Madhya Pradesh and another passed in Civil Appeal No.14613 of 2025, dated 05.12.2025***, wherein the Hon'ble Apex Court expressed its dismay over the manner in which the High Court had condoned a delay of 1612 days on the mere 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 condoning the delay.

8. It is also necessary to refer the decision in ***Thirunagalingam Vs. Lingeswaran and another*** reported in ***2025 Live Law SC 560***, wherein the Hon'ble Apex Court reiterated the legal position that while considering the



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plea for condonation of delay, the 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. In ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** reported in ***2024 SCC Online SC 3612***, the Hon'ble Apex Court referred its earlier decision in ***Union of India Vs. Jahangir Byramiji Jeejeebhoy(D)*** through his



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legal heir, reported in **2024 SCC Online SC 489** 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.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no



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prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

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 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



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

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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



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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,

'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



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plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold.'

10. The learned counsel for the respondent would rely on a decision of Hon'ble Supreme Court in ***Shivamma (D) Lrs Vs Karnataka Housing Board and others*** reported in ***2025 Live Law SC 899***, wherein the Hon'ble Apex Court has held that the expression 'within such period' under Section 5 of the Limitation Act means the entire period from the date when the cause of action accrued, until the date of actual filing, not just the period after prescribed limitation expired and the relevant portion is extracted hereunder :

“258. 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 respondents, it appears that they want to fix their own period of 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, it cannot be heard to plead that the substantial justice deserves to be preferred as against the technical considerations. While



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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.

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

11. Bearing the above position in mind, let us consider the case on hand. As already pointed out, the reasons canvassed for the delay are the petitioner's old age and paucity of funds to file the appeal. It is pertinent to note that the appeal in A.S.No.22 of 2021 came to be allowed on 23.01.2023. But according to the petitioner, he contacted his counsel only during the second week of November 2024 and came to know about the disposal of the first appeal and also the death of his counsel on record.



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12. It is the further case of the petitioner that he applied for copies of judgment and decree through the Junior Advocate on 16.11.2024 and the copies were made ready on 07.12.2024.

13.As rightly pointed out by the learned counsel for the respondent, the second appeal along with delay condonation petition came to be filed on 23.06.2025, though the copies of judgment and decree were made ready on 07.12.2024. Admittedly, the petitioner has not taken any steps thereafter to file the present appeal. But, he gave the very same reason of his old age in addition to the want of necessary funds to prefer the appeal.

14. It is settled law that paucity of funds or inability to pay Court fees is generally not considered a sufficient cause for condoning the delay in filing an appeal and the Hon'ble Supreme Court in the case of *Ayay Dabra Vs. Pyare Ram and others* reported in *AIR 2023 SCC 698*, has held that insufficient funds could not have been a sufficient ground for condonation of delay and it would be an entirely different matter had the appeal been filed in



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terms of Section 149 CPC and thereafter removed the defects by paying deficit Court fees and the relevant portion is extracted hereunder :

“ We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law referred above. Therefore, we find that the High Court was right in dismissing [Section 5](#) application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of Section 149 CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

15.As rightly contended by the learned counsel for the respondent, the petitioner's old age by itself cannot be considered as a reason or sufficient cause to condone the delay of 693 days in filing the second appeal. As per dictum of the Hon'ble Supreme Court, even assuming that the petitioner had no wherewithal to pay the Court fee, the same also cannot be considered as a



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sufficient cause, so as to attract Section 5 of Limitation Act for condonation of delay.

16. When the matter was taken up for enquiry, the learned counsel for the petitioner would submit that since the impugned judgment is one of reversal, the petitioner ought to be afforded an opportunity to prosecute the second appeal and, for that purpose, the delay in filing the same is liable to be condoned. However, merely because the proposed second appeal is directed against the judgment and decree of the first appellate Court reversing the judgment and decree of the trial Court, the same, by itself, cannot be construed as a sufficient cause to condone the delay and entertain the second appeal.

17. Further, a second appeal is not a matter of automatic right. It is maintainable only upon the satisfaction of this Court that the case involves a substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure. The jurisdiction under Section 100 C.P.C. is confined to examining substantial questions of law and does not extend to reappraisal of facts. Therefore, the contention of the petitioner that an opportunity must be



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granted to prosecute the second appeal and that, for such purpose, the delay deserves to be condoned, cannot be accepted.

18.Considering the above, this Court has no hesitation to hold that the petitioner has not shown any sufficient cause for the inordinate delay of 693 days in filing the second appeal and as such, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

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

12.02.2026

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

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To

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

Pre-delivery order made in
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in
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Dated: 12.02.2026