



*C.M.P.(MD)No.17819 of 2024
in S.A(MD)No.SR 25922 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2026

Pronounced on : 18.03.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.17819 of 2024
in
S.A(MD)No.SR 25922 of 2023

1.Devika

2.Nagalakshmi

: Petitioners

Vs.

1.Natarajan

2.Chandra

3.Shanmugasundaram @ Krishnamoorthi

4.Thiruveni

5.Sri Jeyanthi

: Respondents

PRAYER in C.M.P(MD)No.17819 of 2024: Civil Miscellaneous Petition filed under Order 41 Rule 3(A) of C.P.C., r/w Section 5 of Limitation Act, to condone the delay of 362 days in filing the second appeal in S.A(MD)No.SR 25922 of 2023.



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PRAYER in S.A(MD)No.SR 25922 of 2023 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 29.01.2020 in A.S.No.28 of 2014 on the file of the Additional District Court, Dindigul, confirming the judgment and decree, dated 09.01.2014 passed in O.S.No.114 of 2010 on the file of the Additional Sub Court, Dindigul.

For Petitioners : Mr.J.Lawrence,

For Respondents : Mr.G.Gomathi Sankar, for R1 to R4.

: No Appearance, for R5.

ORDER

The above application has been filed, invoking Order 41 Rule 3(A) of C.P.C., r/w Section 5 of Limitation Act, to condone the delay of 362 days in filing the second appeal, challenging the judgment and decree made in A.S.No.28 of 2014, dated 29.01.2020 on the file of the Additional District Court, Dindigul, confirming the judgment and decree, passed in O.S.No.114 of 2010, dated 09.01.2014 on the file of the Additional Sub Court, Dindigul.

2. The petitioners/appellants as plaintiffs filed a suit in O.S.No.114 of 2010 on the file of the Additional Sub Court, Dindigul, claiming partition



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and allotment of $\frac{1}{2}$ share in the suit properties and for permanent injunction restraining the defendants and their men from in any manner alienating or interfering with the suit properties.

3.The defendants 1 to 4 filed their written statement and contested the suit. The learned Additional Subordinate Judge, after framing necessary issues and after full trial, passed the judgment, dated 09.01.2014, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiffs preferred an appeal in A.S.No.28 of 2014 and the learned Additional District Judge, Dindigul, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 29.01.2020, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiffs have preferred the present second appeal along with the above application to condone the delay of 362 days in filing the second appeal.

4.The case of the petitioners canvassed in the delay condonation petition is that though the appellate Court pronounced the judgment on 29.01.2020, the same was not communicated to them by their trial Court



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counsel immediately; that the trial Court counsel was also not co-operating in filing the copy application for obtaining certified copies of the judgment and decree and other documents; that lockdown was imposed, due to Covid-19 pandemic outbreak and the first petitioner was also affected with Covid-19; that the petitioners, due to their severe financial constraints, were unable to arrange funds for obtaining certified copies and file copy application in time; that subsequently, their trial Court counsel filed necessary application and obtained copies of decree, judgment, depositions and documents and the same were made ready on 29.11.2022; that subsequently, they came to know that their case bundle along with certified copies of judgment and decree were misplaced in the office of their trial Court counsel Mr.John, and after hectic search, the same were traced out during third week of March 2023; that thereafter, they had engaged the present counsel through the trial Court counsel Mr.John, and handed over the papers on 25.03.2023 and that there occurred a delay of 362 days in filing the second appeal; that the delay is neither willful nor wanton, due to the above said *bonafide* reasons and that the petitioners will be put to irreparable loss and hardship, if the delay is not condoned.



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5. The respondents filed their counter affidavit disputing the petitioners' averments and further stated that the reasons stated in the affidavit are not genuine; that the first petitioner was not affected by Covid-19 and has raised false allegations in the affidavit; that she did not produce any medical records; that the petitioners did not furnish any particulars about the misplacing of records; that though the petitioners are to explain each and every day delay, they have not given appropriate reason to condone the delay of 362 days and that therefore, the petition is liable to be dismissed.

6. It is necessary to refer to the decision of the Hon'ble Supreme Court in *Shankargir v. State of Madhya Pradesh and another*, rendered in *Civil Appeal No.14613 of 2025, dated 05.12.2025*, wherein the Apex Court expressed its dismay over the manner in which the High Court had condoned a delay of 1612 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 examined with due care and seriousness.



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7. 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 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.”



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8. 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 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.

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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 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.*



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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.*

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.*



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

9. Bearing the above position in mind, let us consider the case on hand. As already pointed out, the petitioners, at the outset, made allegations against their trial Court counsel to the effect that he had not communicated the dismissal of the first appeal in time and had not cooperated in filing the copy application for obtaining certified copies of the judgment and decree.



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However, in the very same affidavit, the petitioners have stated that their trial Court counsel, Mr.John, had in fact filed the necessary applications for obtaining certified copies of the decree, judgment, depositions and documents, and that the same were made ready on 29.11.2022. The petitioners have further alleged that the case records were misplaced in the office of the trial Court counsel and were subsequently traced. Thereafter, according to the petitioners, they engaged the present counsel, also through the very same trial Court counsel, Mr. John, and proceeded to file the appeal along with the present application.

10. In the light of the above, it can be clearly inferred that the petitioners have sought to attribute all events to their trial Court counsel. Though they have alleged that the records were misplaced, no particulars whatsoever have been furnished in support of the said plea. It has now become a routine practice for litigants to make allegations against their own counsel in an attempt to cover up their inaction and negligence. Significantly, even according to the petitioners, the very same trial Court counsel not only assisted them in obtaining certified copies but also facilitated the engagement of the



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present counsel for filing the second appeal before this Court. Further, though the petitioners have alleged that the first petitioner was affected by COVID-19, as rightly contended by the learned counsel for the respondents, not even an iota of medical evidence has been produced to substantiate the said claim.

11. The petitioners have also taken a stand that due to severe financial constraints, they were unable to arrange funds, even for getting certified copies of judgment and decree. At this juncture, it is necessary to refer to the decision of the Hon'ble Supreme Court in ***Ajay Dabra vs. Pyare Ram and Others***, reported in ***AIR 2023 SC 698***, wherein the Hon'ble Apex Court has held that insufficiency of funds cannot be considered as a sufficient ground for condonation of delay. The Hon'ble Supreme Court further observed that it would be an entirely different matter if the appeal had been filed by invoking Section 149 of the Code of Civil Procedure and the defect had subsequently been cured by payment of the deficit Court fee. The relevant portion of the said judgment 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



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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.

12. Considering the above, the petitioners' allegation that they were facing financial constraints and were unable to mobilize funds, cannot be considered a sufficient cause to condone the delay.



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come to the conclusion that partition had already been taken place and that the brothers had been in separate possession and enjoyment of the shares allotted to them and that the plaintiffs after the lapse of several years laid the above suit for partition and the same were rightly rejected by the Courts below and that the petitioners only to drag on the proceedings and to cause loss to the respondents have filed the present second appeal.

16. It is pertinent to note that a Second Appeal is not an automatic right; rather, it is a discretionary remedy provided under the statute, requiring the High Court to be satisfied that the case involves a substantial question of law. A Second Appeal cannot be entertained merely on questions of fact, as the core requirement under Section 100 of the Code of Civil Procedure is the existence of a substantial question of law. Hence, the contention of the petitioner that he should be given an opportunity to prosecute the Second Appeal cannot be countenanced.

17. Considering the above, this Court has no hesitation to hold that the petitioners have not shown any sufficient cause for the inordinate delay of



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362 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.

18. In the result, the Civil Miscellaneous Petition is dismissed.

Consequently, the Second Appeal is rejected at the SR stage itself.

18.03.2026

NCC : Yes /No
Index : Yes / No
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To

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



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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