



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.01.2026

Pronounced on : 23.01.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.7717 of 2025

in

S.A(MD)No.SR 32816 of 2025

Moni (died)

1.Sarasabai

2.Sheeba Kumari

3.Sheema Kumari

4.Suresh Berlin

: Petitioners

Vs.

1.Nalina

2.Aswin (Minor)

: Respondents

PRAYER in C.M.P(MD)No.7717 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 978 days in filing the second appeal in S.A(MD)No.SR 32816 of 2025.



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

WEB COPY

PRAYER in S.A(MD)No.SR 32816 of 2025 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 30.06.2022 in A.S.No.24 of 2018 on the file of the learned Subordinate Judge (Camp Court) at Padmanabhapuram, confirming the judgment and decree, dated 08.06.2014 passed in O.S.No.81 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioner : Mr.S.Rajasekar.

For Respondent : Mr.P.Mahendran.

ORDER

The above application has been filed under Section 5 of Limitation Act, to condone the delay of 978 days in filing the second appeal, challenging the judgment and decree made in A.S.No.24 of 2018, dated 30.06.2022 on the file of the learned Subordinate Judge (Camp Court) at Padmanabhapuram, confirming the judgment and decree, dated 08.06.2014 passed in O.S.No.81 of 2014 on the file of the Principal District Munsif Court, Padmanabhapuram.

2.The respondents as plaintiffs filed the suit in O.S.No.81 of 2014, claiming the reliefs to declare their right of residence in the ancestral family



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

house bearing Door No.11-16/11-1 of Pechipparai Panchayat situated in the first item of the suit property and to award maintenance at Rs.800/- per month till the remarriage of the first plaintiff and till the majority of the second plaintiff from the first defendant and from his other assets including the suit properties and also for permanent injunction restraining the defendants from evicting the plaintiffs from the ancestral shared family house and also from alienating the suit properties.

3.The appellants/defendants filed their written statement and contested the suit. The defendants filed a counter claim, claiming mandatory injunction directing the plaintiffs to vacate the suit schedule house within a specific time to be fixed by the Court. The learned Principal District Munsif, Padmanabhapuram, after framing necessary issues and after full trial, passed the judgment, dated 08.06.2017, partly allowing the suit and granting the reliefs of declaration of right of residence in the house situated in the first item of the suit property and also permanent injunction as claimed, but dismissed the suit with regard to the relief of separate residence and maintenance and also dismissed the counter claim of the defendants. Aggrieved by the said



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

judgment and decree, the defendants filed two appeals in A.S.No.23 of 2018 and A.S.No.24 of 2018, challenging granting of decree in favour of the plaintiffs and dismissal of their counter claim. The learned Subordinate Judge, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 30.06.2022, dismissing both the appeals. Challenging the dismissal of the appeal in A.S.No.24 of 2018, the defendants filed the present second appeal along with the above application to condone the delay of 978 days in filing the second appeal.

4. The case of the petitioners, as canvassed in the petition for condonation of delay, is that after the judgment and decree were passed in A.S.No.24 of 2018 on 30.06.2022, the first petitioner filed a copy application without delay and obtained certified copies from the first appellate Court. However, thereafter, she was unable to mobilise the necessary funds. It is further stated that the second petitioner, aged about 65 years, was suffering from age-related ailments and that her husband, who was the first defendant, passed away on 18.02.2024, due to which she faced considerable difficulties



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

in carrying on her day-to-day life. It is also averred that she was unable to meet her counsel and instruct him to file the second appeal. According to the petitioners, when she finally met her Advocate, she was immediately advised to file the present application seeking condonation of delay. It is asserted that the delay is neither wilful nor wanton, but occasioned by the unfortunate circumstances referred to above, and that the petitioners would be put to irreparable loss and hardship if the delay is not condoned.

5. The first respondent, who filed the suit for her and on behalf of her minor son, the second respondent/second plaintiff, filed a counter affidavit, disputing the affidavit averments and stated that the petitioners have filed copy application only on 23.05.2024 after the delay of more than two years; that the copies of the judgment and decree were made ready on 10.06.2024 and even after receipt of the copies, the petitioners have filed the present application only on 09.04.2025 with a delay of 10 months; that the affidavit averments that they have filed copy application immediately and obtained copies from the first appellate Court are patently false; that the reasons assigned in the affidavit are not bonafide; that the Hon'ble Apex Court



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

has specifically held that the Courts have no power to extend the period of limitation on equitable grounds and the parties are required to provide substantial proof for each and every day delay and that therefore, the above application is liable to be dismissed.

6. No doubt, the petitioners in the affidavit filed in support of the delay condonation petition, have elaborately narrated the merits of the main case in most of the paragraphs. Similarly, the first respondent in her counter affidavit has also adverted predominantly to the merits of the case.

7. It is not in dispute that the first respondent is the wife of one Shibi Kumar, son of the defendants 1 and 2; that the second respondent was born to the first respondent and the said Shibi Kumar on 20.12.2012; that the present petitioners 2 and 3 are the daughters of the first petitioner and sister-in-laws of the first respondent and the fourth petitioner is the husband of the second petitioner and brother-in-law of the said Shibi Kumar and that the said Shibi Kumar committed suicide on 05.01.2014. The respondents, by alleging that the defendants after the death of said Shibi Kumar, have been neglecting them



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

and they were not provided with food and shelter and attempted to send them out of the matrimonial home forcibly, filed the above suit. As already pointed out, the defendants 1 and 2 have filed a counter claim seeking mandatory injunction, directing the respondents to vacate the suit schedule house and hand over possession to the respondents.

8. Before proceeding further, it is necessary to refer the decisions relied on by the learned counsel for the respondents.

(i) (1997) 7 SCC 556 :

P.K.Ramachandran Vs. State of Kerala and another ;

“Limitation - Appeal - Delay in filing appeal - Condonation of delay Essential prerequisite for exercise of discretion to condone the delay - Court must record its satisfaction that the explanation for the delay was either reasonable or satisfactory - Delay of 565 days in filing first appeal by respondent-State against judgment and decree of Sub-Judge in an arbitration f application - No explanation much less a reasonable or satisfactory explanation offered by the respondent-State for condonation of the delay Application for condonation of delay, though seriously opposed, allowed by High Court merely observing that "taking into consideration the



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

averments contained in the affidavit filed in support of the petition to condone the delay, we are inclined to allow the petition" - Held, High Court was not justified in exercising its discretion to condone the delay .”

(ii) (2013) 14 SCC 81 :

Basawaraj and another Vs. Special Land Acquisition Officer.

Limitation - Condonation of delay - Approach of courts while condoning delay - Held, discretion to condone delay has to be exercised judiciously based on facts and circumstances of each case - 'Sufficient cause' cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party - Even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute- Courts have no choice but to give effect to the same - Result flowing from statutory provision is never an evil - Inconvenience not ground for interpreting a statute Courts do not have power to extend 9 period of limitation based on equitable grounds If courts start substituting period of limitation then it would amount to legislation, which is impermissible - If party acted with negligence, lack of bona fides or inaction then there cannot be any justified ground for condoning the delay There is no justification in condoning delay by imposing conditions -



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

Each application for condonation of delay has to be decided within the framework laid down by Supreme Court. If courts start condoning delay where no sufficient cause was made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature - Doctrines and Maxims Limitation Act, 1963 - S. 5 - Condonation of delay Dura lex sed lex Sufficient cause -Equity - Delay, cannot be condoned on equitable grounds, beyond the extent permitted expressly by statute.

(iii) (2014) 11 SCC 351 :

Brijesh Kumar and others Vs. State of Haryana and others.

“Limitation Act, 1963 - S. 5 Extension of prescribed period -Exercise of discretion by court Condition Sufficient cause for delay must be satisfactorily and convincingly explained - Inordinate delay caused by inaction or negligence lacking bona fides would disentitle claimant from protection under S. 5-Appeal (before High Court against award of Land Acquisition Collector under Land Acquisition Act) seeking relief (of higher compensation) filed after inordinate delay of more than 10 yrs only on getting impetus that others, who had approached appellate court promptly succeeded in getting similar relief - Held, delay not condonable.”



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

(iv) AIR 2022 SC 332 :

Majji Sannemma Vs. Reddy Sridevi.

“ 8.Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

9. 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.

10. 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 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 :



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

“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.”

11. 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 Byramji Jeejeebhoy(D) through his 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



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

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 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



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

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 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



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

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.

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



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

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

12. Bearing the above position in mind, let us consider the case on hand. As already pointed out, the reasons canvassed for the delay are that the first petitioner was suffering from ailments due to her old age; that her husband



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

first defendant had passed away on 18.02.2024, subsequent to the judgment of the first appellate Court and hence, she faced lot of difficulties to eke out her life and that therefore, she was not able to meet her counsel and file the present second appeal within time stipulated.

13. The petitioners in their affidavit have alleged that the first petitioner immediately after the pronouncement of judgment by the first appellate Court, applied for certified copies of judgment and decree and obtained the same. But the first respondent in her counter affidavit, has specifically stated that the copy application was filed only on 23.05.2024, after the delay of more than 2 years from the date of judgment and that the decree and judgment were made ready on 10.06.2024. The petitioners have not chosen to dispute the above factum specifically.

14. Moreover, they have not produced any materials to show that they have applied and obtained the copies of judgment and decree immediately, after the first appellate Court judgment. Even assuming for argument sake that they have obtained the copies of judgment and decree immediately, they have



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

not canvassed any reason for the delay from the date of receipt of the copies till the filing of above delay condonation petition.

15. As rightly contended by the learned counsel for the respondents, the petitioners have only alleged vague and bald reasons of the second petitioner's age-related ailments. As already pointed out, the petitioners 2 to 4 were also parties in the suit as well as in the first appeal. Even assuming that the second petitioner was suffering from old age ailments, they have not assigned any reason for the other petitioners in taking necessary steps for filing the second appeal.

16. As already pointed out, the petitioners have also stated that the first defendant/husband of the first petitioner herein passed away on 18.02.2024. As rightly pointed out by the learned counsel for the respondents, the petitioners have not offered any reason or explanation as to why the first defendant did not take any steps to file the second appeal till his death.



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

17. The learned counsel for the respondents would rely on a decision of Hon'ble Supreme Court in the case of ***Ayay Dabra Vs. Pyare Ram and others*** reported in ***AIR 2023 SCC 698*** and argued that insufficiency of funds is not a sufficient cause for condonation of delay 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.

18. As rightly contended by the learned counsel for the respondents, the reason of the petitioners that the second petitioner was not able to mobilize the funds cannot be considered as sufficient cause to condone the delay.



C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025

WEB COPY

19. As per settled legal position referred above, the Courts while considering the plea of condonation of delay must not start with merits of the matter, but can consider the merits for the purpose of condoning the delay only if the sufficient cause given by the litigant and the opposition of the other side is equally balanced or stand on equal footing. In the case on hand, as already pointed out, the reason canvassed, by no stretch of imagination, can be taken as sufficient cause or reason to condone the inordinate delay of 978 days.

20. The learned counsel for the respondents would also contend that the petitioners have filed the second appeal, challenging the judgment and decree made in A.S.24 of 2018, but not filed any second appeal challenging the judgment and decree made in A.S.No.23 of 2018 and that therefore, the present appeal cannot be maintained as the same is barred by the doctrine of the *res judicata*.

21. It is not the case of the petitioners that they have filed any other appeal challenging the judgment and decree passed in A.S.No.23 of 2018. Admittedly, the petitioners have not challenged the judgment rendered in



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

A.S.No.23 of 2018, wherein the trial Court's judgment and decree granting declaration of the right of residence and permanent injunction were confirmed. Hence, this Court finds considerable force in the contention of the respondents that the present appeal is barred by the doctrine of res judicata. Even assuming that such a plea cannot be gone into at this stage, as already pointed out, the petitioners have failed to show any sufficient cause for the inordinate delay of 978 days in filing the appeal. Therefore, this Court has no hesitation in holding that the present application is devoid of merits and is liable to be dismissed.

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

23.01.2026

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



WEB COPY



*C.M.P.(MD)No.7717 of 2025
in S.A(MD)No.SR 32816 of 2025*

K.MURALI SHANKAR,J.

das

To

- 1.The Subordinate Judge (Camp Court)
Padmanabhapuram.
- 2.The Principal District Munsif Court,
Padmanabhapuram.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
C.M.P.(MD)No.7717 of 2025
in
S.A(MD)No.SR 32816 of 2025

Dated: 23.01.2026