



***C.M.P.(MD)Nos.8426 and 8428 of 2024 in
S.A(MD)SR Nos.22630 and 22631 of 2012***

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 19.01.2026

DELIVERED ON : 28.01.2026

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)Nos.8426 and 8428 of 2024

in

S.A(MD)SR Nos.22630 and 22631 of 2012

C.M.P.(MD)No.8426 of 2024:

1.S.Sellam
2.S.Nachan

: Petitioners/Appellants

Vs.

1.K.Chockaiah
2.R.Subbiah

: Respondents/Respondents

PRAYER in C.M.P(MD)No.8426 of 2024: Civil Miscellaneous Petition filed under Order IV Rule 9(4) of A.S.Rules to condone the delay of 1155 days in representation of the above S.A.SR.No.22630 of 2012 against the judgment and decree in A.S.No.103 of 2009, dated 19.01.2012, on the file of the Principal Subordinate Court, Dindigul, confirming the judgment and decree in O.S.No.157 of 2006, dated 30.09.2009, on the file of the District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.



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PRAYER in S.A (MD) SR No. 22630 of 2012 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, passed in A.S.No.103 of 2009, dated 19.01.2012, on the file of the Principal Subordinate Court, Dindigul, confirming the judgment and decree in O.S.No.157 of 2006, dated 30.09.2009, on the file of the District Munsif cum Judicial Magistrate Court, Natham.

C.M.P.(MD)No.8428 of 2024:

1.S.Sellam
2.S.Nachan

: Petitioners/Appellants

Vs.

1.K.Chockaiah
2.R.Subbiah

: Respondents/Respondents

PRAYER in C.M.P(MD)No.8428 of 2024: Civil Miscellaneous Petition filed under Order IV Rule 9(4) of A.S.Rules to condone the delay of 1155 days in representation of the above S.A.SR.No.22631 of 2012 against the judgment and decree in A.S.No.105 of 2009, dated 19.01.2012, on the file of the Principal Subordinate Court, Dindigul, confirming the judgment and decree in O.S.No.158 of 2006, dated 30.09.2009, on the file of the District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.

PRAYER in S.A (MD) SR No. 22631 of 2012 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, passed in A.S.No.105 of 2009, dated 19.01.2012, on the file of the Principal Subordinate Court, Dindigul,



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confirming the judgment and decree in O.S.No.158 of 2006, dated 30.09.2009, on the file of the District Munsif cum Judicial Magistrate Court, Natham.

For Petitioners
in both petitions : Mr.R.Suriya Narayanan

For Respondents
in both petitions : Mr.P.Rajagopalan

COMMON ORDER

Both petitions have been filed seeking orders to condone the delay of 1155 days in representing the Second Appeals in S.A.(MD)SR Nos.22630 of 2012 and 22631 of 2012 against the common judgment and decrees made in A.S.Nos.103 of 2009 and 105 of 2009, dated 19.01.2012, on the file of the Principal Subordinate Court, Dindigul, confirming the common judgment and decrees passed in O.S.Nos.157 of 2006 and 158 of 2006, dated 30.09.2009, on the file of the District Munsif cum Judicial Magistrate Court, Natham, Dindigul District.

2. The petitioners herein filed a suit in O.S.No.157 of 2006 (O.S.No.501 of 2000) on the file of the District Munsif Court, Dindigul, claiming the reliefs of declaration and consequential permanent injunction and the first respondent herein filed a suit in O.S.No.158 of 2006 (O.S.No.432 of 2000), on the file of the



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District Munsif Court, Dindigul claiming the reliefs of declaration and permanent injunction and after joint trial in both the suits, the learned District Munsif cum Judicial Magistrate, Natham passed a common judgment dated 30.09.2009, decreeing the suit in O.S.No.158 of 2006 as prayed for and dismissing the sui in O.S.No.157 of 2006. Challenging the above said common judgment and decrees, the petitioners preferred two appeals in A.S.Nos.103 of 2009 and 105 of 2009 and the learned Principal Subordinate Judge, Dindigul, upon considering the materials available on record and on hearing the arguments of both sides, passed the common judgment and decrees dated 19.01.2012, dismissing the appeals and thereby confirming the common judgment and decrees passed by the trial Court. Aggrieved by the dismissal of the appeals, the petitioners have filed the above two Second Appeals.

3. It is not in dispute that the Second Appeals were filed on 04.06.2012 and the same were returned by the Registry on 05.06.2012 directing compliance of the defects pointed out therein. It is evident from the records that the petitioners filed the above petitions on 26.10.2015 to condone the delay of 1155 days in representing the Second Appeals. It is further evident that the Second Appeals in SR., stage were listed on 10.08.2016 under the caption “Appeal Examiners



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Section default cases” and this Court passed an order extending the time for complying the defects pointed out by the Registry till 24.08.2016, failing which the SR., would be rejected automatically and struck off from the file and that since the defects were not rectified, both the Second Appeals in SR stage were dismissed for default.

4. It is further evident that the petitioners filed petition in C.M.P.(MD)Nos. 7465 of 2022 and 7466 of 2022 seeking to condone the delay of 2155 days in filing the applications to restore the Second Appeals in SR stage in S.A.(MD)SR Nos.22630 of 2012 and 22631 of 2012 and a learned Judge of this Court passed a conditional order directing payment of costs and since the conditions were complied with, the petitions were allowed. The petitioners' applications to restore the Second Appeals at SR stage in C.M.P.(MD)Nos.5416 of 2024 and 5417 of 2024 were allowed by this Court vide order dated 15.04.2024 and that thereafter, the above applications to condone the delay in representing the papers came to be numbered.

5. The reason canvassed in the delay condonation petitions is that since the case bundles were mixed with other case bundles, the appeals in S.A.(MD)SR



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Nos.22630 of 2012 and 22631 of 2012 could not be represented in time, that the printed copies of the judgments of the Courts below were also not obtained from the Advocates, who appeared in the Courts below, that the case bundles were traced out subsequently and the appeals were represented by complying with the defects pointed out by the Registry, that the delay is neither wilful nor wanton, but 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.

6. The first respondent filed a counter affidavit disputing the affidavit averments and further stated that the enormous delay of 1155 days has not been explained properly with any sufficient cause and the reasons stated in the affidavit are vague and casual and wholly inadequate, that the petitioners have not even disclosed any specific date on which they allegedly became aware of the dismissal of the Second Appeal, nor have they explained the circumstances under which such knowledge was acquired, that the conduct of the petitioners during the proceedings clearly reflects gross negligence, lack of diligence and total disregard for the procedural discipline of this Court, that the petitioners have consistently filed the petitions after lapse of years and that the above petitions have been filed after the lapse of 3 years in order to drag on the proceedings and



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thereby defeating the rights of the respondents. The first respondent has further stated that the original suits were disposed of by common judgment dated 30.09.2009 and the appeal filed by the petitioners were also dismissed on 19.01.2012 and despite the same, the petitioners have been continuously harassing the respondents in one way or the other by dragging the proceedings for more than a decade causing mental agony and preventing the respondents from enjoying the fruits of the decree and that therefore, the above applications are liable to be dismissed.

7. When the above matters were taken up for enquiry, the learned Counsel for the first respondent would submit that, in the earlier applications filed to condone the delay of 2155 days in filing C.M.P.(MD)Nos.7465 and 7566 of 2022 seeking restoration of the Second Appeals, which had been dismissed for default at the SR stage, as well in the applications filed for restoration of the Second Appeals in C.M.P.(MD)Nos.5416 and 5417 of 2024, no notice was served on the first respondent and without affording any opportunity to the respondents to contest the said petitions, the petitions came to be allowed by this Court. No doubt, as rightly contended by the learned Counsel for the first respondent, in C.M.P.(MD)Nos.7465 and 7466 of 2022, a conditional order was passed directing



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the petitioners to pay costs of Rs.3,000/- each to an NGO, meant for disabled children, and admittedly, no notice was issued to the first respondent and the first respondent was not heard.

8. Before entering into further, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Indian Statistical Institute Vs. Associated Builders and Others*** reported in ***(1978)1 SCC 484*** relied on by the learned Counsel for the petitioners wherein the Hon'ble Apex Court has held that the petition under Section 5 of the Limitation Act to condone the delay in preferring the appeal is different from a petition to condone the delay in representing the appeal papers and the relevant passages are extracted hereunder:

*“11. In a recent judgment of this Court delivered on August 3, 1977 in ***Mahant Bikram Dass v. Financial Commissioner and Ors.***, reported in [1978] ISCR 262 it is pointed out that the petition under **section 5** of the Limitation Act seeking to condone the delay in preferring an appeal is different from a petition for excusing the delay in re-presentation.*

12. Even in cases where there has been delay in filing of an appeal or objection petition within the time prescribed when the delay is not due to want of bona fides by the petitioner and is due



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to the party having acted in a particular manner on the wrong advice given by his legal adviser, he cannot be held guilty of negligence so as to disentitle him to plead sufficient cause under [section 5](#) of the Limitation Act.”

9. To counter this arguments, the learned Counsel for the first respondent would rely on the following decisions:

(i) ***Ruskim Sea Foods Limited Vs. Evergreen Sea Foods Pvt Ltd.,*** (In C.M.P.Nos.21784 and 21785 of 2017 in OSA No.SR79476 of 2017, dated 15.02.2018 (MAD) High Court DB):

“32. Ordinarily, the 'Condonation of Delay' is a matter of discretion to be exercised by the Concerned Court. Also, it is true that the length and breadth of delay is not relevant, but the acceptance of explanation can only be a relevant criterion for the concerned Court to deal with / condone the aspect of 'Condonation of Delay'. However, in this regard, the Petitioner / concerned litigant is to offer / ascribe sufficient reasons or project sufficient cause or good cause to condone the delay with a view to enable the Concerned Court to take a liberal view with a view to secure the ends of justice.

33. It is to be borne in mind that the term 'Sufficient Cause' under [Section 5 of the Limitation Act, 1963](#) is an elastic one to enable the Court to apply the Law in a meaningful fashion, with a view to secure the ends of justice. However, 'Sufficient Cause' / 'Good Cause'



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*is a condition precedent for exercise of discretion by the Concerned Court in regard to the 'Condonation of Delay'. If the delay in question is not either properly or satisfactorily and convincingly explained, the Court of Law cannot condone the delay on sympathetic ground alone, as per decision of Hon'ble supreme Court **BrijeshKumar V. State of Haryana** reported in 2014 AIR(SC)1612.*

34. In considering a Petition for 'Condonation of Delay', no straight jacket cast iron formula is enunciated to arrive at a conclusion if sufficient / good grounds are made out or not. In short, each case is to be looked into based on the facts and circumstances, in which a litigant acts / conduct himself, in the considered opinion of this Court. 'Where a sufficient cause' or 'good cause' is not shown, then, no question of 'Condonation of Delay' arises, as opined by this Court."

(ii) Pathapati Subba Reddy (died) by L.Rs., and Others Vs. The Special Deputy Collector (LA) ((2024)4 SCR 241);

*"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law **laid down by** this Court, it is evident that:*

(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;



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(ii) *A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;*

(iii) *The provisions of the **Limitation Act** have to be construed differently, such as **Section 3** has to be construed in a strict sense whereas **Section 5** has to be construed liberally;*

(iv) *In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in **Section 3** of the Limitation Act;*

(v) *Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;*

(vi) *Merely some persons obtained relief in similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;*

(vii) *Merits of the case are not required to be considered in condoning the delay; and*

(viii) *Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision.”*



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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.”

10. The learned Counsel for the first respondent would also rely on the decision of the Hon'ble Supreme Court in ***H.Dohil Constructions Co. Pvt., Ltd., Vs. Nahar Exports Ltd.***, reported in **2015(5) CTC 534**, wherein the Hon'ble Apex Court dealt with the delay of 9 days in filing the first appeal and the delay of 1727 days in representing such appeal. In a suit for specific performance, the trial Court granted damages and refused to grant specific performance and challenging the same, the plaintiff filed an appeal with 9 days delay and represented such appeal papers with the delay of 1727 days. Since the High Court condoned the delay, the same was challenged before the Hon'ble Supreme Court and the relevant passages are extracted hereunder:

“23. When we apply those principles to the case on hand, it has to be stated that the failure of the Respondents in not showing due diligence in filing of the appeals and the enormous time taken in the



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refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on the part of the Respondents. Further, when the Respondents have not come forward with proper details as regards the date when the papers were returned for refiling , the non-furnishing of satisfactory reasons for not refiling of papers in time and the failure to pay the Court fee at the time of the filing of appeal papers on 06.09.2007, the reasons which prevented the Respondents from not paying the Court fee along with the appeal papers and the failure to furnish the details as to who was their counsel who was previously entrusted with the filing of the appeals cumulatively considered, disclose that there was total lack of bonafides in its approach. It also requires to be stated that in the case on hand, not refiling the appeal papers within the time prescribed and by allowing the delay to the extent of nearly 1727 days, definitely calls for a stringent scrutiny and cannot be accepted as having been explained without proper reasons. As has been laid down by this Court, Courts are required to weigh the scale of balance of justice in respect of both parties and the same principle cannot be given a go-by under the guise of liberal approach even if it pertains to refiling. The filing of an application for condoning the delay of 1727 days in the matter of refiling without disclosing reasons, much less satisfactory reasons only results in the Respondents not deserving any indulgence by the Court in the matter of condonation of delay. The Respondents had filed the suit for specific performance and when the trial Court found that the claim



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for specific performance based on the agreement was correct but exercised its discretion not to grant the relief for specific performance but grant only a payment of damages and the Respondents were really keen to get the decree for specific performance by filing the appeals, they should have shown utmost diligence and come forward with justifiable reasons when an enormous delay of five years was involved in getting its appeals registered.

24. We, therefore, find total lack of bona-fides in its approach and the impugned order of the High Court in having condoned the delay in filing as well as refiling, of 9 days and 1727 days respectively, in a casual manner without giving any reason, much less acceptable reasons, cannot therefore be sustained. The appeals are allowed and the impugned order is set aside.”

11. In the case on hand, as rightly contended by the learned counsel for the first respondent, the petitioners have not canvassed any valid reason or furnished a sufficient explanation for the inordinate delay of 1,155 days. The sole reason put forth is that the Second Appeal case bundles were allegedly mixed up with other case bundles and, therefore, could not be represented in time. Except for this vague averment, the petitioners have not furnished any particulars whatsoever as to where the bundles were mixed up, with which cases, or when they were subsequently traced. As already pointed out, this Court had earlier



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condoned a delay of 2,155 days in filing the restoration applications. As per the dictum of the Hon'ble Apex Court, such inordinate delays cannot be condoned in a casual or mechanical manner.

12. Considering the entire facts and circumstances of the case, it is manifest that the conduct of the petitioners reflects gross negligence, lack of diligence, and want of bona fides. As rightly contended by the learned counsel for the respondent, though the first appeals were dismissed as early as on 19.01.2012, the petitioners have been protracting the proceedings for more than 13 years thereafter, that too without even securing numbering of the Second Appeals. Merely because the present applications seek condonation of delay in representing the Second Appeals, it cannot be contended that the matter is confined only between the applicants and the Court and therefore warrants a lenient consideration. Since the suit filed by the first respondent had been decreed as early as on 30.09.2009, the petitioners, by their conduct, have been dragging on the proceedings and thereby depriving the respondents of the fruits of the decree.



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13. Considering the above, this Court has no hesitation in holding that the petitioners have not shown any sufficient cause for the inordinate delay of 1155 days in representing the Second Appeal papers and as such, this Court concludes that the above applications are absolutely devoid of merits and the same are liable to be dismissed.

14. In the result, both the Civil Miscellaneous Petitions are dismissed and the Second Appeals are rejected in the SR stage itself.

28.01.2026

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

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To:

- 1.The Principal Subordinate Court, Dindigul.
- 2.The District Munsif cum Judicial Magistrate Court, Natham,
Dindigul District.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN
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in
S.A(MD)SR Nos.22630 and 22631 of 2012

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