



*C.M.P.(MD)No.16751 of 2024
in S.A(MD)No.SR 83284 of 2024*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.01.2026

Pronounced on : 06.02.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.16751 of 2024

in

S.A(MD)No.SR 83284 of 2024

1.R.Chandra

2.R.Anandhavalli

3.R.Venkatesan

: Petitioners/Appellants

Vs.

1.A/m.Senthil Andavan Thiruvarul Food Nidhi
under the Control and Management of Sri Kasi Mutt,
Thiruppanandal, rep.by the Head of Kasi Mutt
Sri-la-Sri Kasi Vasi Muthukumarasami Thambiran Swamigal Avargal
Mutt Premises, Thruppanandal Village,
Thiruvidadaimarudur Taluk.

2.M/s.Reliance Communication Ltd.,
Reliance House, Chennai – 06.

3.R.Rengarajan

: Respondents/Respondents



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PRAYER in C.M.P(MD)No.2862 of 2024: Civil Miscellaneous Petition filed under Section 5 of Limitation Act., to condone the delay of 1325 days in filing the second appeal against the judgment and decree made in A.S.No.11 of 2018, dated 11.01.2019 on the file of the Principal Subordinate Court Kumbakonam, partly allowing the judgment and decree passed in O.S.No.83 of 2009, dated 28.09.2016 on the file of the I Additional District Munsif Court, Kumbakonam.

PRAYER in S.A (MD) SR No. 83284 of 2024 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree made in A.S.No.11 of 2018, dated 11.01.2019 on the file of the Principal Subordinate Court Kumbakonam, partly allowing the judgment and decree passed in O.S.No.83 of 2009, dated 28.09.2016 on the file of the I Additional District Munsif Court, Kumbakonam.

For Petitioners : Mr.K.Gokul,

For Respondents : Mr.Kandhan Duraisamy, for R1.

: No Appearance for R3.

: R2 Ex-parte.

ORDER

The above application has been filed under Section 5 of Limitation Act., to condone the delay of 1325 days in filing the second appeal, challenging the judgment and decree made in A.S.No.11 of 2018, dated 2/18



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11.01.2019 on the file of the Principal Subordinate Court Kumbakonam, partly allowing the judgment and decree passed in O.S.No.83 of 2009, dated 28.09.2016 on the file of the I Additional District Munsif Court, Kumbakonam.

2.The appellants are defendants 1 to 3. The first respondent, as plaintiff, filed a suit in O.S.No.83 of 2009 seeking a declaration that the suit property belongs to them, recovery of possession, a mandatory injunction directing removal of the Reliance tower, and for past profits as well as future mesne profits.

3.The defendants 1 to 4 filed their written statement and contested the suit. The learned I Additional District Munsif Court, Kumbakonam, after framing necessary issues and after full trial, passed the judgment, dated 28.09.2016, granting the reliefs as prayed for. Aggrieved by the said judgment and decree, the defendants 1 to 4 preferred an appeal in A.S.No.11 of 2018 and the learned Principal Subordinate Judge, Kumbakonam, upon considering the materials available on record and on hearing the arguments of both the



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sides, passed the judgment and decree, dated 11.01.2019, partly allowing the appeal and thereby setting aside the judgment and decree in respect of the relief of mandatory injunction and past mesne profit, but confirmed the judgment and decree of the trial Court with regard to the relief of declaration, recovery of possession and future mesne profit. Challenging the judgment and decree of the first appellate Court, the defendants 1 to 3 filed the present second appeal along with the above application to condone the delay of 1325 days in filing the second appeal.

4.The petitioners/defendants 1 to 3 in their application to condone the delay have narrated the merits of the main case in most of the paragraphs and their case with regard to the delay condonation is that the appeal in A.S.No.11 of 2018 pending on the file of the Principal Subordinate Court Kumbakonam, was followed by the third respondent, who was also party to the proceedings; that the Court proceedings and the status of the appeal were followed by him, but unfortunately he had not stated about the status of the case to the petitioners; that the petitioners came to know that he colluded with the first respondent and is not having good relationship with them, that when



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the first respondent attempted to take possession, they came to know about the result of the said appeal suit and filing of the execution petition; that the petitioners immediately approached their Advocate in the trial Court and filed a copy application to get the certified copies on 25.09.2024 and the same were received on 03.10.2024; that their present counsel on record filed the second appeal on 12.11.2024 and hence, there was a delay of 1325 days in filing the second appeal; that the petitioners will be put to irreparable loss and hardship, if the delay is not condoned and that therefore, the delay in filing the second appeal is to be condoned.

5.Despite taking sufficient time, vakalat for the second respondent was not filed. Hence, the second respondent is set ex-parte. Despite receipt of Court notice, the third respondent has not turned up.

6.The first respondent filed a counter affidavit disputing the affidavit averments and further stated that the third respondent/third defendant is none other than the son of the first petitioner/first defendant; that the third respondent has been residing with the first petitioner under the same roof; that



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the contention of the petitioners that the third respondent colluded with the first respondent and not informed about the status of the appeal is false; that the petitioners have not shown any sufficient cause to condone the delay of 1325 days in filing the appeal; that the petitioners are illegally squatting over the property; that the affidavit filed in support of the delay condonation petition is bereft of material particulars and the reasons are not sufficient to condone the delay; that the above petition has been filed only to defeat the rights of the first respondent and with an ulterior motive of denying the fruits of the decree and that therefore, the above petition is liable to be dismissed with exemplatory cost.

7. The first respondent in the counter affidavit has also stated that the suit property to an extent of 0.10.5 Ares comprised in S.No.264/31 (Old S.No.264/5) situated in Thiuppanandhal Village, Thiruvudaimarudur Taluk, Thanjavur District belongs to the plaintiff Sri Kasi Mutt; that the Mutt has created endowment Arul Mighu Senthil Andavan Thiruvarul Food Nidhi and the suit property was earmarked for the endowment; that the defendants 1 to 4 by creating documents and fabricating the records claimed right over the suit



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property and allowed to erect a tower in a portion of the suit property; that the plaintiff was forced to file the suit for the reliefs of declaration of title, recovery of possession, mandatory injunction and mesne profit in O.S.No.83 of 2009 and the suit was decreed by the I Additional District Munsif Court, Kumbakonam vide judgment, dated 28.09.2016; that the defendants preferred an appeal in A.S.No.11 of 2018; that the first appeal was partly allowed vide judgment and decree, dated 11.01.2019, confirming the judgment and decree of the trial Court granting the relief of declaration of title, recovery of possession and mesne profits; that the defendants 1 to 4 failed to hand over the possession of the suit property to the plaintiff and hence, the plaintiff was constrained to file an execution petition in E.P.No.57 of 2019 and the same is pending.

8. The only point for consideration is whether the delay of 1325 days in filing the second appeal, challenging the judgment and decree made in A.S.No.11 of 2018, dated 11.01.2019 on the file of the Principal Subordinate Court, Kumbakonam, is liable to be condoned.?



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9. Before proceeding further, it is necessary to refer the decision of Hon'ble Supreme Court in **Brijesh Kumar and others Vs. State of Haryana and others** reported in (2014) 11 SCC 351.

“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.”

10. It is also 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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11. 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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12. 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 Byramiji 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



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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 reasonably diligent in prosecuting the matter and this vital test for



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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.'

13. Bearing the above position in mind, let us consider the case on hand. As already pointed out, the only reason canvassed by the petitioners for the delay is that the third respondent was taking care of the appeal; that the third respondent colluded with the first respondent and failed to inform the



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status of the first appeal; that they were not aware of the result of the appeal and that when the first respondent was attempting to take possession, they came to know about the dismissal of the appeal and the pendency of the execution petition. Admittedly, the third respondent is none other than the son of the first petitioner.

14. It is pertinent to note that petitioners 1 to 3, along with the third respondent, had filed the first appeal challenging the judgment and decree of the trial Court. However, the present second appeal has been filed only by the petitioners, arraying the fourth defendant as the third respondent. Though the petitioners have alleged that the third respondent colluded with the first respondent and, therefore, failed to disclose the status or result of the appeal, they have not produced even an iota of evidence to substantiate such allegations.

15. It is also not shown that the third respondent alone was conducting or taking care of the first appeal. Even assuming, for the sake of argument, that the third respondent was following the appeal proceedings, that by itself



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cannot be a ground to contend that the petitioners were unaware of the appeal proceedings. As already pointed out, the petitioners, along with the third respondent, had jointly filed the first appeal.

16. It is pertinent to note that the plaintiff Mutt, after the disposal of the first appeal has initiated the execution proceedings in E.P.No.57 of 2019 and the same is pending. According to the first respondent, the petitioners entered into appearance in the execution proceedings and they were fully aware of the entire proceedings.

17. According to the first defendant, the petitioners were fully aware of the appeal as well as the execution proceedings, and the present appeal has been filed nearly five years after the disposal of the appeal and the filing of the execution petition.

18. The Hon'ble Supreme Court has settled the legal position, as referred to above, that while considering a plea for condonation of delay, the Courts should not commence with an examination of the merits of the matter.



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The merits may be looked into only for the limited purpose of condoning the delay, and that too where the sufficient cause pleaded by the litigant and the objections raised by the opposite party are equally balanced or stand on the same footing.

19. In the present case, as already pointed out, the reasons canvassed, by no stretch of imagination, can be construed as sufficient cause to condone the inordinate delay of 1325 days.

20. When the matter was taken up for enquiry, the learned counsel for the petitioners would submit that they may be afforded an opportunity to prosecute the second appeal. Per contra, the learned counsel for the first respondent would contend that the petitioners are squatting over the property and, by such conduct, have deprived the first respondent–Mutt of the benefits arising from the property.

21. Moreover, a second appeal is not a matter of right but a statutory remedy of a limited and discretionary nature. It can be entertained only upon



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the High Court being satisfied that the case involves a substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure. A second appeal is not intended for reappreciation of facts. Therefore, the contention of the petitioners that they should be given an opportunity to prosecute the second appeal cannot be accepted.

22. Considering the above, this Court has no hesitation in holding that the petitioners have not shown any sufficient cause for the inordinate delay of 1325 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.

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

06.02.2026

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

das

To

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

Pre-delivery order made in
C.M.P.(MD)No.16751 of 2024
in
S.A(MD)No.SR 83284 of 2024

Dated: 06.02.2026