



*C.M.P.(MD)No.18068 of 2025
in S.A(MD)SR No.3429 of 2020*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.02.2026

Pronounced on : 18.03.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.18068 of 2025
in
S.A(MD) SR No.3429 of 2020

1.Victoriya

2.Sharmila

3.Herbert

4.Ranjith Mani

: Petitioners

Vs.

Thavamani

: Respondent

PRAYER in C.M.P(MD)No.18068 of 2025: Civil Miscellaneous Petition filed under Order IV Rule 9(4) of AS Rules, to condone the delay of 2098 days in representing the appeal, challenging the judgment and decree, dated 26.09.2019 passed in A.S.No.80 of 2017 on the file of the Principal Sub Court, Nagercoil, reversing the judgment and decree, dated 22.12.2015 passed in O.S.No.179 of 2012 on the file of the Principal District Munsif Court, Nagercoil.

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PRAYER in S.A(MD)SR No.3429 of 2020 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 26.09.2019 passed in A.S.No.80 of 2017 on the file of the Principal Sub Court, Nagercoil, reversing the judgment and decree, dated 22.12.2015 passed in O.S.No.179 of 2012 on the file of the Principal District Munsif Court, Nagercoil.

For Petitioners : Mr.K.Rajeshwaran,

For Respondent : Mr.K.P.Narayanakumar.

ORDER

The above application has been filed seeking orders to condone the delay of 2098 days in representing the appeal in S.A(MD) SR No.3429 of 2020, challenging the judgment and decree made in A.S.No.80 of 2017, dated 26.09.2019 on the file of the Principal Sub Court, Nagercoil, partly reversing the judgment and decree passed in O.S.No.179 of 2012, dated 22.12.2015 on the file of the Principal District Munsif Court, Nagercoil.

2. The respondent as plaintiff filed a suit in O.S.No.179 of 2012 before the District Munsif Court, Nagercoil, claiming permanent injunction



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restraining the defendants and their men from entering into or otherwise disturb the plaintiff's peaceful possession and enjoyment of the suit property. Subsequently, the plaint was amended claiming the relief of declaration of plaintiff's title and for recovery of possession from the defendants and for permanent injunction.

3.The defendants 1 to 3 and the fourth defendant filed their written statement and contested the suit. The learned Principal District Munsif, Nagercoil, after framing necessary issues and after full trial, passed the judgment, dated 22.12.2015, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.80 of 2017 and the learned Principal Sub Judge, Nagercoil, upon considering the materials available on record and on hearing the arguments of both the sides, passed the judgment and decree, dated 26.09.2019, partly allowing the appeal and while rejecting the relief of declaration, granted the relief of recovery of possession. Challenging the impugned judgment and decree, the defendants have filed the present second appeal along with the above application to condone the delay of 2098 days in filing the second appeal.



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4.It is evident from the records that the defendants have filed the second appeal before this Court on 20.01.2020, but the same was returned for rectification of some defects pointed out therein. Thereafter, the defendants have represented the appeal papers on 25.10.2025 along with present application to condone the delay of 2098 days in representing the second appeal papers.

5.The reason canvassed in the delay condonation petition is that the appeal papers were returned by the Registry on 23.01.2020 for rectification of some defects; that the returned papers were misplaced with some other case bundle at their office and the returned papers were traced out only on 21.10.2025; that the same was represented immediately before the Court on 22.10.2025 and again on 23.10.2025 the same was returned for rectification of some minor defects and thereafter, the same was represented on 25.10.2025; that the said delay has occurred in representing the above second appeal due to the above said reasons; that the delay is neither willful nor wanton, but only due to the above said bonafide reason and that the petitioner will be put to irreparable loss and hardship, if the delay is not condoned.



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6. The respondent filed a counter affidavit, disputing the petitioners' averments and further stated that after the lapse of 6 ½ years, the petitioners have come forward with the above petition to condone the delay of 2098 days; that the representation delay cannot be condoned casually or routinely and there must be sufficient cause and bonafide reason for day to day delay; that the petitioners have not shown any reason in their affidavit to condone the inordinate delay of 2098 days, except the reason that the bundle was misplaced in the Advocate's office; that the reason stated in the affidavit shows that either the party or his counsel not vigilant to proceed with the second appeal and their sole intention is to keep the litigation pending or otherwise to stall the execution petition filed by the petitioner to get recovery of the property; that the petitioners while filing the second appeal on 23.01.2020, have not filed any documents as required under Appellate side rules and mere filing of decree and judgment of the first appellate Court and getting seal from this Court only to save the limitation is nothing but a tactics followed by the petitioners to prevent the respondent from proceeding EP by saying that second appeal is pending before the High Court; that the sale



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consideration was paid by the respondent/plaintiff in the year 1991 and the suit was filed in the year 2015 and obtained decree from the first appellate Court on 26.09.2019; that the respondent is now aged 69 years and even after the lapse of 45 years, she was unable to get the property in her favour; that the above delay would go to show that the petitioners are not interested to proceed with the case or otherwise which indirectly means for past 6 ½ years, the petitioners have not contacted their counsel to enquire about the stage of the case; that the party, who is not diligent with the case, is not entitled to get the discretionary relief and that therefore, the petition is liable to be dismissed.

7. Before proceeding further, it is necessary to refer the judgment 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



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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 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



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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 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.”



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8. In the present case, as rightly contended by the learned counsel appearing for the respondent, the petitioners have neither assigned any valid reason nor furnished any satisfactory explanation for the inordinate delay of 2098 days. The sole reason canvassed is that the second appeal papers were allegedly misplaced along with some other case bundle and, therefore, could not be represented in time. Except for this vague averment, no further particulars have been furnished by the petitioners.

9. It is pertinent to note that the affidavit in support of the petition has been filed only by the learned counsel for the petitioners and not by any of the petitioners themselves. It is also not their case that, after filing the second appeal, they had been making periodic enquiries with their counsel regarding the status of the appeal. Had such enquiries been made, they could have ascertained the reasons for the non-representation of the appeal papers within time.



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10. Considering the entire facts and circumstances of the case, it is clearly evident 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 appeal was dismissed as early as on 26.09.2019, the petitioners have been protracting the proceedings for more than 6 ½ years thereafter, that too without even securing numbering of the Second Appeal. Merely because the present application seeks condonation of delay in representing the Second Appeal, it cannot be contended that the matter is confined only between the applicants and the Court, so as to warrant a lenient consideration. When the first appellate Court had decreed recovery of possession as early as on 26.09.2019, the petitioners, by their conduct, have been dragging on the proceedings and thereby depriving the respondent of the fruits of the decree.

11. Considering the above, this Court has no hesitation in holding that the petitioners have not shown any sufficient cause for the inordinate delay of 2098 days in representing the Second Appeal papers and as such, this Court



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concludes that the above application is absolutely devoid of merits and the same is liable to be dismissed.

12. In the result, the Civil Miscellaneous Petition is dismissed and the Second Appeal is rejected in the SR stage itself.

18.03.2026

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

To

- 1.The Principal Sub Court, Nagercoil.
- 2.The Principal District Munsif Court, Nagercoil.
- 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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Dated:18.03.2026