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C.M.P(MD)No.18952 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2026

Pronounced on : 17.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.18952 of 2025

in

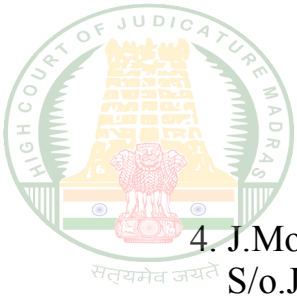
A.S(MD)SR.No.99518 of 2025

J.Abdul Kalam Azath,
S/o.Jamal Moideen,
No.5/37, Railady Street,
Budalur Taluk,
Thanajvur District.

... Petitioner/Appellant

Vs.

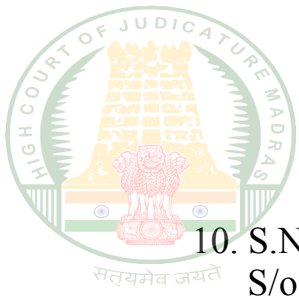
- 1.S.Noorjahan,
W/o.Sheik Moideen,
No.5/71-D1, Main Road,
Budalur Taluk,
Thanajvur District.
2. S.Magabu Beevi,
W/o.M.Syed Musthafa,
Abishegapuram,
Lalgudi Post and Taluk,
Trichy District - 620 601.
3. M.Mumtaj Begum,
W/o.M.Mohammed Kalifullah,
No.43-C, Puliyakudi Road,
Railadi, Ammapettai,
Kokkeri Post,
Thanjavur - 614 402.



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4. J.Mohamed Ali,
S/o.Jamal Moideen,
No.5/37, Railady Street,
Budalur Taluk,
Thanjavur District.
5. J.Varisai Mohammed,
S/o.Jamal Moideen,
No.5/37, Railady Street,
Budalur Taluk,
Thanjavur District.
6. J.Kadher Moideen,
S/o.Jamal Moideen,
No.5/37, Railady Street,
Budalur Taluk,
Thanjavur District.
- 7.K.Fathima Begum,
W/o.Kadher Irabhim @ Kaja,
Near Mandram Bus Stop
Kulamanickam,
Ariyalur District.
8. M.Rajeshkanna,
S/o.A.Muthsamy.
No.17, 8th Street,
Anan Nagar, Thanajvur Town,
Thanajvur.
9. K.Shanmuga,
W/o.Kalyanasundram ,
No.19-Mela Adidravidar Street,
Sathanoor Post,
Thiruvaiyaru Taluk,
Thanjavur District - 613 204.



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10. S.Nithiyanandham (Died),
S/o.Sivasamy,
No.17-3, Sukkaliyur,
Karuppampalayam,
Karur - 639 003.

11.V.Sumathy,
W/o.Visawalingam,
No.308, Mela Adidraavidar Street,
Mettukkollai Street,
Pathirakudi Post,
Thanajvur District - 613 102.

12.A.Govindarajan,
S/o.Apparajan,
No.13, Sannathi Street,
Thirukkattuppalli Post,
Thanjavur District - 613 104.

13.M.Manivel,
S/o.Murugaiyan,
No.109A, Adhidraavidar Street,
Nanjikkottai, Vallundampattu Post,
Thanjavur Taluk and Munsif,
Thanjavur District.

14.P.M.Kumar,
S/o.Murugesan,
No.37-782, New Kudiyan Street,
Puduchathiram, Thirukkattuppalli,
Thanjavur District - 613 104.

15.The Manager,
Oriental Bank of Commerce,
Thanjavur Branch,
Having Office At
Medical College Road,
Mangalapuram,
Thanjavur - 613 005.

... Respondents/Respondents



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PRAYER: This Civil Miscellaneous Petition is filed under Section 5 of the Limitation Act, 1963 to condone the delay of 194 days in filing the above said First Appeal.

For Petitioner	: Mr.C.Vakeeswaran
For R1 to R3	: Mr.A.Senthil Kumar
For R4 & R5	: Ms.K.Sarulatha
For R9, R11 & R14	: Mr.S.Manoj Kumar
For R6, R12 & R15	: No Appearance
For R7, R8, R10 & R13	: Dispensed With

ORDER

This Civil Miscellaneous Petition is filed to condone the delay of 194 days in filing the First Appeal against the judgment and decree, dated 04.12.2024 made in O.S.No.31 of 2016 on the file of the I Additional District and Sessions Court (PCR), Thanjavur.

2.The petitioner has stated reasons in the accompanying affidavit filed along with the Civil Miscellaneous Petition as follows:

The respondents 1 to 3 filed a suit for partition in O.S.No.31 of 2016 on the file of the I Additional District and Sessions Court (PCR), Thanjavur, against the petitioner and other respondents claiming 3/12th in the suit properties. The respondents 1 to 3 added the petitioner's property, which was



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allotted to the petitioner through a Will, dated 06.04.1994, executed by his father. The other properties were not added as suit properties. Hence, the suit was filed for partial partition. The petitioner contested the suit. However, the trial Court has decreed the suit on 04.12.2024. Due to old age and sickness, the petitioner could not prefer the appeal within the stipulated time. So, there is 194 days delay in filing the first appeal. Hence, the delay may be condoned.

3.The respondents 1 to 3 filed a counter and stated as follows:-

The alleged Will, dated 06.04.1994, was declined by the trial Court with a specific finding that the Will was not proved. The suit was decreed on 04.12.2024, and the copy application was filed on 06.02.2024. The appeal has to be filed on or before 05.05.2025. The petitioner has filed the appeal with 194 days delay. The reasons stated by the petitioner are sickness, and inability to mobilize the funds for paying the Court fee. The petitioner has not stated what kind of disease he was affected. The petitioner is in possession of sufficient immovable properties and is getting more earnings from them. The payable Court fee is fixed at the Court fee of Rs.5,000/-, which is not a higher amount. The petitioner has not produced any bank statements to show his financial capacity. The reasons stated by the petitioner



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are vague one. The petitioner has no proper and satisfactory reason.

Therefore, the petition may be dismissed.

4.The learned counsel for the petitioner has argued that the respondents 1 to 3 filed a main suit for partition of 3/12th share in the suit properties, which was decreed by the Trial Court on 04.12.2024. The petitioner's specific case is that his absolute property was included and also other family properties were not included in the suit. The petitioner filed a copy application on 06.12.2024 and certified copies were delivered on 06.02.2025. Since the petitioner, being aged, was suffering from age related sickness and was also struggling to meet out his daily needs, and was unable to pay the Court fee, the delay occurred. He further submitted that the rules of limitation are not meant to destroy the rights of parties and that a distinction must be made between a case where the delay is inordinate and a case where the delay is only for a few days and depending upon the facts in the latter case, the Court should follow a liberal approach to condone the delay. In this case, the delay is 194 days and the petitioner has a good case to succeed the appeal. The petitioner is ready to pay costs to compensate the respondents in case of a direction by this Court. Therefore, the delay may be condoned.



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WEB COPY 5.In support of his arguments, the learned counsel for the petitioner

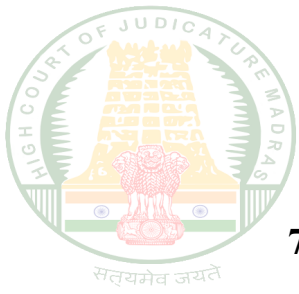
has relied on the following rulings:

(1) 1998 Supreme (SC) 939 in the case of N.Balakrishnan /v/ M.Krishnamurthy.

(2) 2001 Supreme (SC) 955 in the case of Vedabai @ Vijayanatabai /v/ Shantaram Baburao Patil & Ors.

(3) 2019 Supreme (SC) 549 in the case of Bhivchandra Shankar More /v/ Balu Gangaram More & Ors.

6.The learned counsel for the respondents 1 to 3 argued that the petitioner has not produced any medical certificate to show his sickness. The petitioner is having number of properties and the reason stated by him that he has no sufficient means to pay the Court fee of Rs.5,000/- is a vague one. The Hon'ble Apex Court has declined to condone the delay of 178 days in the absence of the production of a medical certificate. The petitioner wants to drag the proceedings. Therefore, the petition has no merits and the same is liable to be dismissed.



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7. In support of his contentions, the learned counsel for the respondents 1 to 3 relied on the following orders of this Court and the Hon'ble Apex Court.

(1) Order in C.R.P.(MD) No.798 of 2019 dated 20.12.2023 passed by this Court in the case of Chitravel and Anr. /v/ Jothimani.

(2) (2012) 3 Supreme Court Cases 311 in the case of Ashok Kumar /v/ District Magistrate and Anr.

(3) Order in Civil Appeal No.317 of 2025 in the case of H.Guruswamy & Ors. vs. A.Krishnaiah passed by the Hon'ble Supreme Court on 08.01.2025.

8. The other respondents have not raised any serious objection.

9. Heard both sides and perused the records in this Civil Miscellaneous Petition.

10. It is clear that both parties are relatives who are agitating for the partition of their family properties. The petitioner stated that the respondents 1 to 3 have added his absolute property which was derived by registered

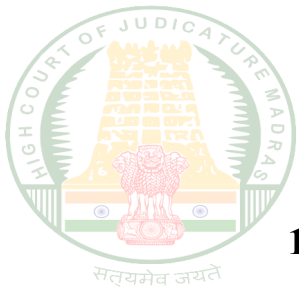


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Will. Both parties have argued mainly regarding the merits of the case and the dispute surrounding the Will, but the same cannot be decided in this petition, which has to be considered in an appeal. In this petition, the matter to be considered is the reason for the delay.

11. From perusal of records, it is clear that the trial Court passed a preliminary decree on 04.12.2024, the petitioner has filed a copy application for preferring an appeal on 06.12.2024. So, the petitioner has a valid intention to prefer an appeal. The contesting respondents 1 to 3 have not denied this fact. There is a long standing struggle between the petitioner and the respondents in litigation over the partitioning of their family properties. The petitioner states that he is aged and suffering from age related sickness and is also struggling for his daily needs. Upon consideration of rulings relied on by both sides, it is a well settled principle that the parties should not be defeated in their rights of appeal merely on the ground of delay, and that there is a distinction between inordinate delay and ordinate delay, and that the Court should follow a liberal approach to condone the delay in case of ordinate delay.



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12.In this case, the delay is 194 days. While it is true, the petitioner has not produced any medical certificate to show his sickness, the fact remains that both parties are relatives and are contesting the suit for partition. In such circumstances, the respondents could have filed the materials to disprove the sickness of the petitioner. The petitioner has prayed for condonation of the delay in preferring the first appeal. The petitioner states that he has a fair chance of success in the first appeal. It is also a settled position of law that each and every litigant has to be given sufficient opportunity to be heard in the appeal and the delay in filing the first appeal would not defeat the appeal right of every litigant. The contesting respondents 1 to 3 also have an opportunity to be heard in the first appeal. The other respondents have not raised any objection in the present petition proceedings. In view of the above facts and circumstances, this Court is inclined to condone the delay and thus, this petition is to be allowed.

13.In the result, this Civil Miscellaneous Petition is allowed.

17.04.2026

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

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P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
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in
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