



C.M.P.(MD)No.1690 of 2025
in S.A.(MD)SR.No.28230 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.02.2026

Pronounced on : 23.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.1690 of 2025
in
S.A.(MD)SR.No.28230 of 2014
and
S.A.(MD)SR.No.28230 of 2014

K.Jeyaseelan

... Petitioner/
Appellant

Vs.

1.The Assistant Section Engineer,
(XTNL), Bharat Sanchar Nigam Limited,
Marthandam, Marthandam Post,
Vilavancode Taluk,
Kanyakumari District.

2.Junior Telecom Officer,
Bharat Sanchar Nigam Limited,
Telecom Exchange, Marthandam,
Vilavancode Taluk,
Kanyakumari District.

3.E.Kolappan

...Respondents/
Respondents

(3rd Respondent is given up since he remained exparte)



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in S.A.(MD)SR.No.28230 of 2014*

Prayer in C.M.P.(MD)No.1690 of 2025 : The Civil Miscellaneous Petition filed under Order IV Rule 9(4) of A.S. Rules, praying to condone the delay of 3807 days in representing the above S.A.SR.No.28230 of 2014.

Prayer in S.A.(MD)SR.No.28230 of 2014 : The Second Appeal filed under Section 100 C.P.C., against the judgment and decree of the lower appellate Court dated 07.12.2013 passed in A.S.No.64 of 2010 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree of the trial Court dated 17.07.2009 passed in O.S.No.568 of 2004 on the file of the I Additional District Munsif Court, Kuzhithurai.

(in both cases)

For Petitioner : Mr.M.R.Sreenivasan

For Respondents : Mr.K.R.Laxman for R1 & R2

R3 – Given up

COMMON ORDER

The Civil Miscellaneous Petition has been filed seeking orders to condone the delay of 3807 days in representing the second appeal in S.A. (MD)SR.No.28230 of 2014 against the judgment and decree made in A.S.No.64 of 2010 dated 07.12.2013 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree passed in O.S.No.568 of



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2004 dated 17.07.2009 on the file of the I Additional District Munsif Court, Kuzhithurai.

2. The petitioner / appellant is the plaintiff. He filed a suit in O.S.No.568 of 2004 before the I Additional District Munsif Court, Kuzhithurai, for recovery of Rs.39,243.80/- with interest and costs.

3. The respondents 1 and 2 / defendants 1 and 2 filed their written statement and contested the suit.

4. The learned I Additional District Munsif, Kuzhithurai, after framing necessary issues and after full trial, passed a judgment and decree dated 17.07.2009 dismissing the suit with costs. Aggrieved by the dismissal of the suit, the petitioner / plaintiff preferred an appeal in A.S.No.64 of 2010 and the learned Subordinate Judge, Kuzhithurai, upon considering the materials available on record and on hearing the arguments of both the sides, passed a judgment and decree dated 07.12.2013 dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the said judgment and decree of



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the first appellate Court, the petitioner / plaintiff has preferred the present second appeal.

5. It is evident from the records that the second appeal was filed on 27.06.2014 and the appeal papers were returned by the Registry for rectification of the defects pointed out therein on 01.07.2024. The petitioner has represented the second appeal papers on 11.12.2024 along with the above petition to condone the delay of 3807 days in representing the second appeal papers.

6. The reason canvassed in the affidavit filed in support of the delay condonation petition is that the appeal papers were returned on 01.07.2024 by the office for rectifying certain defects and the same were misplaced in the office of the petitioner's counsel when he was shifting his office from K.K.Nagar to Uthangudi, that the papers were traced after the petitioner met his counsel on 11.12.2024 and immediately, they rectified the mistakes and represented the second appeal papers on 11.12.2024, that there occurred a delay of 3807 days in representing the papers, that the delay is neither wilful nor deliberate but due to bona fide reasons



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mentioned above and that the ends of justice require that the delay of 3807 days in representing the appeal papers is to be condoned.

7. The respondents 1 and 2 filed a counter affidavit disputing the petitioner's affidavit averments and further stated that there is an inordinate delay of 3807 days in representing the second appeal, that there is no merit in the second appeal as there is no question of law exists, that the petitioner is adopting delaying tactics to avoid the respondents 1 and 2 to execute the order of the Courts below, that the petitioner did not provide any sufficient reason for the said inordinate delay, that the petitioner has stated that misplacement of bundle by his advocate as the only reason for the delay and that therefore, the petition is liable to be dismissed.

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***, 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



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WEB COPY 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 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. The Hon'ble Supreme Court in ***Pathapati Subba Reddy (died) by LRs and others Vs. The Special Deputy Collector (LA)*** reported in (2024) **4 SCR 241** has summarized the principles with regard to the condoning of delay and the same are extracted hereunder:

“26. On a harmonious consideration of the



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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;

(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



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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.”

10. It is necessary to refer the decision of the Hon'ble Supreme Court in ***H.Guruswamy and others Vs. A.Krishnaiah since deceased by LRs*** reported in ***2025 INSC 53***,

“13.We are at our wits end to understand why the High Court overlooked all the aforesaid aspects. What was the good reason for the High Court to ignore all this? Time and again, the Supreme Court has reminded the District judiciary as well the High courts that the concepts such as “liberal approach”, “Justice oriented approach”, “substantial justice” should not be employed to frustrate or jettison the substantial law of limitation.

14. We are constrained to observe that the High Court has exhibited complete absence of judicial



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conscience and restraints, which a judge is expected to maintain while adjudicating a lis between the parties.

15. The rules of limitation are not meant to destroy the rights of parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.

16. The length of the delay is definitely 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 respondents herein, it appears that they want to fix their own period of limitation for the purpose of 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



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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.”

11. In a similar case, the Hon'ble Supreme Court in ***H.Dohil Constructions Co. Pvt., Ltd., Vs. Nahar Exports Ltd.,*** reported in **2015 (5) CTC 534**, 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 refiling can only be construed, in the absence of any valid explanation, as gross negligence and lacks in bonafides as displayed on



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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



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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.”

12. In the case on hand, as already pointed out, the only reason canvassed is that the returned appeal papers were misplaced in the office of the petitioner's counsel while he was shifting his office from K.K.Nagar to Uthangudi and that the papers were traced after the petitioner met his



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counsel on 11.12.2024.

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13. As rightly pointed by the learned counsel appearing for the respondents 1 and 2, the petitioner has not filed any affidavit of the advocate or the person incharge of the advocate office, where the appeal papers were misplaced. Moreover, except the vague averment, the petitioner has not furnished any particulars as to when the appeal papers were misplaced and when the petitioner came to know about the misplacement of the papers and that the steps taken by him for tracing out the papers through his counsel or the persons available in that office.

14. As rightly contended by the learned counsel appearing for the respondents 1 and 2, though the first appeal was dismissed as early as on 07.12.2013, the petitioner has been protracting the proceedings for more than 11 years thereafter, that too without even securing numbering of the second appeal. Merely because the present petition 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 and therefore warrants a lenient consideration. In the present case, the delay of 3807



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days is certainly enormous and inordinate. As per the dictum of the Hon'ble Apex Court, such inordinate delay cannot be condoned in a causal or mechanical manner.

15. The learned counsel appearing for the petitioner would submit that the petitioner has a good case in the Second Appeal and that, therefore, he should be given an opportunity to prosecute the same. It is pertinent to note that a Second Appeal is not an automatic right; rather, it is a discretionary remedy provided under the statute, requiring the High Court to be satisfied that the case involves a substantial question of law. A Second Appeal cannot be entertained merely on questions of fact, as the core requirement under Section 100 of the Code of Civil Procedure is the existence of a substantial question of law. Hence, the contention of the petitioner that he should be given an opportunity to prosecute the Second Appeal cannot be countenanced.

16. 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



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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 reasons canvassed, by no stretch of imagination, can be taken as sufficient cause or reason to condone the inordinate delay of 3807 days.

17. Considering the above, this Court has no hesitation in holding that the petitioner has not shown any sufficient cause for the inordinate delay of 3807 days in representing the second appeal and as such, this Court concludes that the above petition is absolutely devoid of merit and is liable to be dismissed.

18. In the result, this Civil Miscellaneous Petition is dismissed. Consequently, S.A.(MD)SR.No.28230 of 2014 is rejected at SR stage itself.

23.03.2026

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

- 1.The I Additional District Munsif,
Kuzhithurai.
- 2.The Subordinate Judge,
Kuzhithurai.

Pre-Delivery Order made in
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