

**IN THE COURT OF SUBORDINATE JUDGE,  
MADURANTAKAM.**

**Present: Mr. T. GANESH, B.A., B.L.,  
Subordinate Judge  
Madurantakam**

**Saturday, this 19<sup>th</sup> day of July 2025  
I.A.No. 2/2025  
in  
O.S.No. 88/2016  
(CNR No. TNCG13000431-2016)**

1. Thulasiyamal (Died)
2. G. Rajendiran
3. G. Ramdoss
4. N. Rosammal

...Petitioners/Petitioners/ 4<sup>th</sup> defendant

..Vs..

1. Munusamy Naidu (Died)
2. C. Rajagopal Naidu
3. C. Subbaiya
4. Rakesh
5. Ramya
6. Rosammal
7. Rajendiran
8. Sujatha

...Respondents/Plaintiffs

This petition coming up for final hearing on 07.07.2025 in the presence of M/s.K.Ayyasamy and S.Jothi, counsels for the petitioner/petitioner/ 4<sup>th</sup> defendant and Mr.S.Subramanian, counsel for respondents/plaintiffs and set exparte in main suit and after hearing the

arguments on both sides and upon perusing the records, having stood over for the consideration of this court till date, this court delivered the following;

### **ORDER**

This petition is filed by the petitioner under section 5 of Limitation Act to condone the delay of 99 days in filing the application to restore the petition in I.A No. 111/2019 in O.S No. 88/2016 which was dismissed for default on 18.06.2024.

#### **2. Averments of the petitioner:**

Petitioner is the petitioner in I.A No. 111/2019 and 4<sup>th</sup> defendant in the above case. Petitioner had filed an application to compare the thumb impression and to send for the document dated 01.04.21978 to expert opinion in I.A. No. 111/2019. During pendency of the suit and petition the 1<sup>st</sup> plaintiff Munusamy was died intestate left behind him his wife Visalakshi, daughter Sureha and son Daneshkumar and daughter Lavanya as his legal heirs. The above said deceased 1<sup>st</sup> plaintiffs wife Munusamy and her daughter Surekha have filed an application to recognize themselves and son Daneshkumar and another daughter Lavanaya as the legal heirs of deceased Munusamy and impleaded themselves as plaintiffs 9 and 10 and impleaded the said son Daneshkumar and daughter Lavanaya as the defendants 5 and 6 in the above suit and the same was numbered in I.A. No. 1/2023. Hence this court was pleased to ordered for steps for 1<sup>st</sup> plaintiff in I.A. No. 111/2019 which was filed by petitioner and the same was posted on 18.06.2024. On that day my petition in I.A. No. 111/2019 was dismissed for non-taken the steps of 1<sup>st</sup> Respondent/1<sup>st</sup> plaintiff. After allowing the petition in I.A. No. 1/2023 alone, petitioner could file the steps to amend the petition in I.A. No. 111/2019 to implead the legal heirs

of deceased 1<sup>st</sup> plaintiff. Hence petitioner filing this petition to restore the petition in I.A No. 111/2019 to file which was dismissed for default on 18.06.2024. If the petition is not restored, petitioner will be put into great loss and hardship. No prejudice will be caused to other side. Now the petitioner's age was 69 years and petitioner old age disease he couldn't contact his counsel often and recently he came to know about the dismissal of the his petition in I.A No. 111/2019 dated 18.06.2024. There is a delay of 99 days in filing restore petition in I.A 111/2019 in O.S No. 88/2016. Hence the petitioner files this petition for condone delay of 99 days.

**3. Memo of counter of the Respondents in brief:**

The respondents denies the allegations set out in the affidavit. Petitioner wantonly not taken the steps in I.A No. 111/2019. The petition filed only to drag on the proceedings. Hence this petition is liable to be dismissed with cost.

4. No oral or documentary evidence adduced by both sides.
5. Heard both sides and perused the records.

**6. Point:**

***“Whether this application can be allowed?”***

This petition is filed under Section 5 of the Limitation Act to condone the delay of 99 days in filing a petition to restore I.A. No. 111/2019 in O.S. No. 88/2016, which was dismissed for default on 18.06.2024 for non-taking of steps to bring on record the legal heirs of the deceased 1<sup>st</sup> plaintiff.

The petitioner is the 4<sup>th</sup> defendant in the suit and the petitioner in I.A. No. 111/2019, which was filed to send for a document dated 01.04.1978 for expert opinion. It is the petitioner's case that during the pendency of the said interlocutory application, the 1<sup>st</sup> plaintiff, Munusamy,

passed away intestate, leaving behind his wife Visalakshi, daughters Surekha and Lavanya, and son Daneshkumar. Thereafter, I.A. No. 1/2023 was filed to bring on record the legal heirs of the deceased 1st plaintiff. The said petition was allowed, and necessary amendments have been carried out.

It is contended that the petitioner was unable to take timely steps in I.A. No. 111/2019 due to the pendency of the legal heir petition in I.A. No. 1/2023 and also on account of his advanced age (69 years) and age-related health issues, which prevented him from being in regular contact with his counsel. The petitioner submits that he recently came to know about the dismissal of I.A. No. 111/2019 and thereafter took immediate steps to file this petition. He asserts that no prejudice would be caused to the respondents by condoning the delay, whereas he would suffer irreparable loss and hardship if the petition is not restored.

On the other hand, the respondents have filed a counter, opposing that the applicaiton was to protract the proceedings.

This Court has carefully perused the averments of the affidavit, counter affidavit, and the records. It is an established principle that in matters concerning condonation of delay, the courts should adopt a liberal approach, provided that the delay is not deliberate, mala fide, or grossly negligent. It is not in dispute that I.A. No. 1/2023 to implead the legal heirs of the deceased 1<sup>st</sup> plaintiff was pending and has since been allowed. Therefore, the petitioner's explanation that he could not proceed further in I.A. No. 111/2019 until the legal representatives were impleaded is not without merit. Further, the reason attributed to the petitioner's age-related ailments and lack of communication with his counsel is also plausible in

the circumstances. The delay of 99 days is not inordinate, and the explanation offered, though not perfect, is sufficiently reasonable.

On the contrary, no serious prejudice is shown to be caused to the respondents if the delay is condoned. Dismissal of the petition on technical grounds would defeat the substantive rights of the parties, especially when the original interlocutory application pertains to the sending of a document for expert opinion, which may go to the root of the matter. Accordingly, in the interest of justice, and considering the principle that procedural laws are handmaids of justice, this Court is inclined to condone the delay of 99 days in filing the restoration petition.

**7. Result:**

In the result this application is allowed on condition that the petitioner shall pay a sum of Rs. 1000.00 ( Rupees One Thousand) only to the respondent/plaintiff on or before 30.07.2025. Call 31.07.2025.

On 31.07.2025:

Cost Paid. Petition is allowed.

Directly typed in my personal lap-top, corrected and pronounced by me in the open court, this 19<sup>th</sup> day of July 2025.

Subordinate Judge,  
Madurantakam.

**I. Petitioner side evidence and Exhibits :- Nil.**

**II. Respondents side Evidence and Exhibits :- Nil.**

Subordinate Judge,  
Madurantakam.

**FAIR/DRAFT ORDER**  
**I.A No.2/2025**  
**in**  
**O.S No. 88/2016**  
**D.O.D: 19.07.2025**  
**SUB COURT,**  
**MADURANTAKAM**