



WEB COPY



A.No.924 of 2025
in
E.P (D).No.137765 of 2019

MASTER
28.11.2025

ORDER

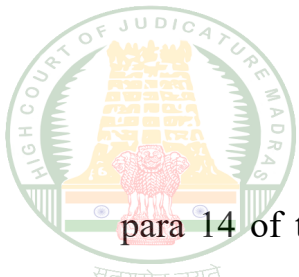
1. This application is filed to condone the delay of 1723 days in representing the above execution petition.

2. The case of the applicant is that the second respondent with an ulterior motive and malafide intention, in willful violation of the order passed by the Hon'ble High Court has conveyed the property to his daughter on 21.12.2017 by way of settlement deed and the said fact came to light only when the petitioner has applied for encumbrance certificate during the last week of February 2020. Meanwhile, the execution petition which was filed before the pandemic got stuck in the section for a long time and only during October 2020 the papers were taken from the Registry, since the name of the owner of the property has been changed, E.P.D.No.137795 of 2019 could not be represented. Subsequently, the applicant have filed W.P.No.2079 of 2021 for a Writ of Mandamus to direct the concerned authorities to cancel the settlement date dated 21.12.2017 in Document No.4458 of 2017 on the file of SRO, Sembiam. Later, the applicant have also filed the contempt petition No.247 of 2021 against the respondents wherein, the daughter of second respondent was impleaded as



one of the respondent and a final order was passed on 08.12.2021 declaring the settlement deed dated 21.12.2017 in Document No.4458 of 2017 on the file of SRO, Sembiam as null and void. Thereafter, on obtaining the certified copy of the said order in Contempt petition No.247 of 2021, the same was communicated to the concerned authorities who failed to comply with the order of Hon'ble High Court because of which the applicant filed an amendment application in W.P (MP) No.32257 of 2024 for amending the prayer to direct the concerned authorities to make entry of the order passed in contempt petition No.247 of 2021 declaring the settlement deed as null and void in the relevant registers and the same was allowed on 12.11.2024. Subsequent to which the Registration Department carried out the relevant entries in the concerned Register and only then the applicant was able to apply for encumbrance certificate to file the correct details in the above said E.P. Because of the above said reasons, there occurred a delay of 1723 days in representing the execution petition.

3. Respondent stated that the applicant has not explained each and every day of delay in representation and even from his own affidavit filed along with this application, it could be seen that an exparte decree was passed during 2018. So, during 2018 to 2020 the delay in filing the E.A has not been explained. Further, the contempt petition and writ petition were filed in the year 2021, the contempt petition was duly contested by this respondent and he was not punished by way of contempt by the Hon'ble High Court. All this shows that the applicant has not explained the delay from 2018 to 2021 and further he is not clear with number of days of delay, in



para 14 of the affidavit accompanying this application the applicant has mentioned 1483 days and in the prayer he has mentioned 1705 days.

4. Heard both side counsels and materials on record perused. The learned counsel for the petitioner submitted that the delay is not willful or wanton and the same occurred due to the bonafide reasons stated by the applicant in the affidavit filed in support of this application. Per contra, the learned counsel for the respondent argued that the petitioner has not explained each and every day of delay and so the application is to be dismissed. In support of this contention, the learned counsel for the respondent relied on the decision in M/s.Ess Gee International represented by its Manager Mr.Prasad --Vs-- The State of Tamil Nadu and two Others CMP No.2698 of 2021 and W.A.SR.No.85362 of 2021 dated 10.03.2022 passed by our Hon'ble High Court wherein it is held that "keeping in mind the principles of law as extracted supra and applying the same to the facts of this case, we are of the opinion that in granting the indulgence and condoning the delay it must be proved beyond the shadow of doubt that the petitioner / appellant was diligent and was not guilty of negligence, whatsoever. Whereas the petitioner/appellant herein has not shown any good and sufficient reason to condone the delay of 7 years in preferring the appeal. The delay cannot be condoned simply because the petitioner / appellant's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. Therefore, we are not inclined to condone the delay".

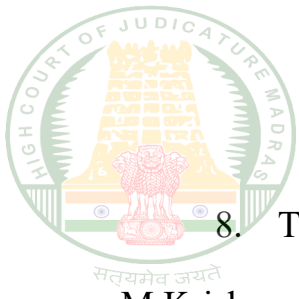
5. Yet another decision relied on by the learned counsel for the respondent is a decision in Pathapathi Subba Reddy died represented by L.Rs and others --Vs-- The



Sepcial Duty Collector (LA) wherein Hon'ble High Court has refused to set aside the order of the Hon'ble High Court in refusing to condone the inordinate delay in filing the appeal.

6. Materials and records perused. The main execution petition was filed to sell the petition schedule mentioned property in public auction and to realise the decreetal amount of Rs.2,16,93,522/- in the month of November 2019 which was returned stating to be filed along with encumbrance certificate. It is the case of the petitioner that only when he applied for the encumbrance certificate in the last week of February 2020, it came to his knowledge that the second respondent willfully in violation of the order passed by the Hon'ble High Court with ulterior motive and malafide intention conveyed the property to his daughter on 21.12.2017 by way of settlement deed and thereafter the petitioner took several steps and also filed contempt petition only then Registration Department carried out necessary entries in the relevant registers and then the petitioner applied for encumbrance certificate and re-presented the present application with delay of 1723 days which is purely because of the pendency of writ petitions and contempt petitions against the authorities of the Registration Department.

7. The only contention raised by the respondent is that each and every day of delay has not been explained by the petitioner and so the inordinate delay of 1723 days cannot be condoned by this court and also there is no explanation for the delay caused during the period 2018 to 2020.



8. This court relies upon the Judgment in N.Balakrishnan --Vs--

M.Krishnamurthy [1998(7) SCC 123] wherein our Hon'ble Apex Court observed as follows:

"The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repaid the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not meant to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time. Condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other case, delay of a very long range can be condoned as the explanation thereof is satisfactory. In every case of delay, there can be some lapse on the part of the



litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. The words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice."

9. This court also relies upon another decision of our Hon'ble Apex Court in *Inder Singh –Vs– The State of Madhya Pradesh* (Civil Appeal No. of 2025 [@ Special Leave Petition (Civil) No.6145 of 2024] dated 21.03.2025 wherein our Hon'ble Apex Court while condoning the delay of 1537 days in filing the second appeal before Hon'ble High Court it was observed as "*There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that if in a particular case the merits have to be examined, it should not be scuttled merely on the basis of limitation.*"

10. Keeping in mind the principles of law as extracted supra and applying the same to the facts of this case, this court is unable to accept the contention of the respondent that each and every day of delay has not been explained and moreover, no litigant ordinarily stands to benefit by instituting proceeding beyond time. It is



settled law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It is seen from the records, the main E.P has been filed in the month of November 2019 and so the contention of the respondent that no reason has been stated for the delay caused between the period 2018 to 2020.

11. In view of the foregoing discussions and also considering the fact in the case on hand is delay in re-presentation only and not in filing, this court is of considered opinion that this application is to be allowed and at the same time, in order to compensate the hardship caused to the respondent, it is deemed fit to impose cost.

In fine, this application will be allowed on cost of Rs.2,000/- to be paid by the petitioner to the respondent within 4 weeks.

MASTER