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C.M.P(MD)No.9631 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2026

Pronounced on : 10.04.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.P(MD)No.9631 of 2025

in

Rev.Aplc(MD)SR.No.19905 of 2019

Manikandan,
S/o. Muthu Virumandi,
Karunakkamutham Patti,
Keelakudalur Village,
Uthamapalayam Taluk,
Theni District.

... Petitioner/Petitioner

Vs.

G.Palani Velu
S/o.Gurusamy Pillai,
Door No.60,
Grama Savadi Street,
Ward No.28, Cumbam,
Uthamapalayam Taluk,
Theni District.

... Respondent/Respondent

PRAYER: Civil Miscellaneous Petition is filed under Order IV Rule 9 of the A.S.Rules, to condone the delay of 2123 days in representing the Rev.Aplc(MD)SR.No.19905 of 2019.

For Petitioner : Mr.V.Ramakrishnan
For Respondent : Mr.V.George Raja
for M/s.Ajmal Association



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ORDER

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

The petitioner has filed a petition in CMP (MD) No.4935 of 2016 in A.S(MD) SR No.13851 of 2016 to condone the delay of 2606 days in filing the first appeal against the judgment and decree passed in O.S.No.59 of 2007 on the file of the District Court, Theni. The said petition was dismissed by this Court on 30.01.2019 by observing that the petitioner has not filed any proof to show his illness to condone the delay in the restoration application. Since this Court has not considered the reasons assigned in the affidavit in C.M.P(MD)No.4935 of 2016, which was filed for condoning the delay in filing the appeal, the petitioner has filed a review application to rectify the said error immediately after obtaining copies of the said order. The Registry has returned the review application on 24.07.2019 for certain compliance. The review application was duly represented after rectifying defects, but the same was again returned on 16.12.2019 for some

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more compliance. The returned papers got mixed with some other bundles in

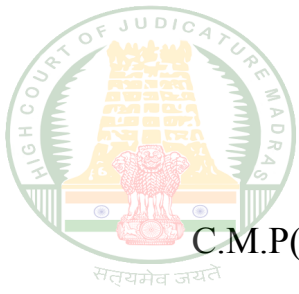
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the advocate's office while shifting the premises and the same could not be traced out in spite of diligent search. In the meantime, the petitioner and his mother suffered severe health setbacks due to age, however, they made frequent enquiries with counsel. On 06.06.2025, the returned review application was traced out. Immediately, the petitioner represented the same along with this petition to condone the delay of 2123 days. The delay is neither willful nor wanton. The petitioner may be given an opportunity to prosecute the review application, otherwise the petitioner will be put to irreparable loss and hardship. Hence, the delay may be condoned.

3.The respondent filed a counter and objected the petition and stated as follows:

The petitioner has filed a petition in C.M.P(MD)No.4935 of 2016 under Section 5 of the Limitation Act to condone the huge delay of 2606 days in filing the first appeal against the judgment and decree of the trial Court passed in the suit for specific performance. The reason assigned by the petitioner are not only false but also insufficient to condone such a huge delay. The said C.M.P(MD)No.4935 of 2016 was dismissed for default on 09.08.2017. Subsequently the petitioner filed an application in

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C.M.P(MD)No.9521 of 2017 to restore the petition in C.M.P(MD)No.4935

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of 2016. The petitioner used to harass the respondent by filing repeated applications. This Court dismissed the said petition in C.M.P(MD) No.4935 of 2016 on 30.01.2019. The petitioner obtained a certified copy on 26.04.2019 and filed a review application on 30.06.2019, which was returned on 24.07.2019 and again on 16.12.2019. Thereafter, the petitioner has represented the returned review application only on 11.08.2025, merely after a delay of 6 years. The reasons stated in the affidavit that the returned papers got mixed with some other case bundle while shifting premises are not true. There is no documentary proof provided for the old address and the new address of the premises. Another reason is that the petitioner's mother passed away on 22.04.2025, which is not a convincing reason. Since the review application was returned on 16.12.2019, after a lapse of 6 years, death in 2025 cannot justify the prior delay. There is no sufficient reason for 2123 days in representation of the returned review application. The suit was laid on 04.11.2008 and the suit ended in favour of the respondent. After 18 years, again the petitioner is trying to harass the respondent by filing frivolous and vexatious petitions. The petition is not maintainable and therefore, the petition is liable to be dismissed.



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4.The learned counsel for the petitioner has submitted that the petitioner has filed a petition in C.M.P(MD)No.4935 of 2016 to condone the delay in preferring the first appeal. This Court heard both sides and passed an order on 30.01.2019 dismissing the petition with the observation that the petitioner has not proved his reason for ailment as stated in the restoration petition. In fact, the petitioner has not filed any restoration petition, he has only filed a condonation petition. On 26.04.2019, the petitioner has obtained a certified copy of the order and on seeing the same, the above observation was noted. Hence, on 03.06.2019, the petitioner has filed a review petition as the error was an apparent error in the impugned order. The said review petition was returned on 24.07.2019 for a certain query. On its representation, again it was returned on 16.12.2019, which was mixed up with some other case bundle as the petitioner's counsel shifted his premises. Though there is no necessity to issue notice to the other side in the matter of delay in representation, notice was issued to the respondent. Moreover, the review application was filed within the prescribed time limit. The only delay is in respect of representation. In such cases, the delay is not subject to rigorous tests, and there is no question of the interest of anybody else being affected. The Courts have to take a lenient view in condoning the delay in representation. If a review application has been filed in time, but there is an



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inordinate delay in the representation of papers returned for rectification of

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defects, the delay can be condoned by taking a lenient view by compensating

the other side on payment of costs. Though the respondent has objected that

the matter has been dragging on for 18 years by the petitioner, the suit was

filed for specific performance in the year 2007. The petitioner has deposited

the entire balance sale consideration on 13.04.2008, as he has a good case

and therefore, the petitioner has filed a first appeal along with the delay

condonation petition. That delay condonation petition was dismissed by this

Court as if that petition was filed for restoration of the case proceeding.

So, to review the same, the petitioner has filed a review petition on time,

upon its return for certain defects, the same was represented with a delay.

Therefore, the delay is between the Court and the party. The petitioner seeks

a review to correct an apparent error in the impugned order, dated

30.01.2019, passed by this Court in C.M.P(MD)No.4935 of 2016. So, the

petitioner is the affected party than the respondent and the Court must ensure

that justice does not suffer. Therefore, the delay in representation may be

condoned, for which the petitioner is ready to pay costs to the respondent by

way of compensation.



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5. In support of his argument, the learned counsel for the petitioner

has relied on the following citations:

1. AIR 1978 Supreme Court 335 in the case of “Indian Statistical Institute /v/ Associated Builders and Others”

2. Order in C.R.P.No.400 of 1978 (Dt.16.06.1978) of Madras High Court in the case of “The General Manager, Heavy Vehicles Factory, Avadi /v/ T.Shadrak”

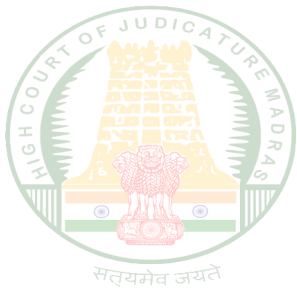
3. Order in L.P.A.No.124 of 1993 of High Court Madras in the case of “Y.Cusba /v/ K.Subbarayan”

4. 2000 Supreme (Mad) 112 in the case of “Lakshminarayanan /v/ Vaigundanamamani and Anr.

5. (2007) 4 MLJ 635 in the case of D.Muralidharan /v/ Chinnappan (Died) and Ors.

6. 2000 Supreme (Mad) 927 in the case of Kannammal and Anr. /v/ Subatra

7. Order in C.R.P.No.2388 of 2019, Dated 19.12.2022 of Madras High Court in the case of “Bysani Madhava Chetty’s Charity Fund, Chennai /v/ The Commissioner HR & CE, and Others.



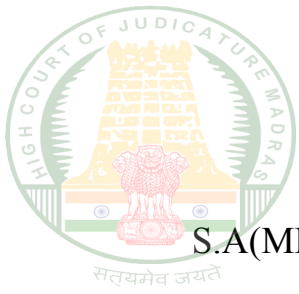
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8.Order in C.R.P(NPD)(MD)No.1927 of 2018, dated 27.06.2023 of Madurai Bench of Madras High Court in the case of “V.Muruganatham & Anr. /v/ Chokkanathan”.

6.Per contra, the learned counsel for the respondent has vehemently contended that the petitioner filed a suit for specific performance in 2007 and the suit was dismissed on 04.11.2008. The connected suit filed by the respondent was ended in favour of the respondent up to the first Appellate Court in A.S.No.28 of 2017, and now, the Second appeal in S.A(MD)No.681 of 2021 is pending before this Court. When the facts are being so, the petitioner has filed a first appeal against the dismissal of his suit along with the delay condonation petition in C.M.P.(MD)No.4935 of 2016 to condone the delay of 2606 days in filing the appeal and the same was dismissed on 30.01.2019. Now, the petitioner has filed this present petition to condone the delay of 2123 days in representing the review application in Rev.Aplc(MD)SR.No.19905 of 2019 to review the order passed in C.M.P.(MD)No.4935 of 20216, dated 30.01.2019. The petitioner has filed this petition after a lapse of 6 years. The reason stated by the petitioner is that since his counsel shifted the premises, the returned papers were mixed with some case records. However, the petitioner has filed a Second Appeal in

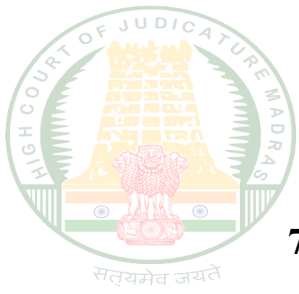


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S.A(MD)No.681 of 2021 on 20.10.2021 and filed this petition along with the

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affidavit in 2025. The address of the petitioner's counsel mentioned in the appeal memorandum in S.A(MD)No.681 of 2021, as well as in this petition, is one and the same. There is no change of address. So, the petitioner has filed this petition with false averments. If the petitioner shows sufficient cause, the delay condonation can be considered, but the petitioner has stated false facts and averments. Such a reason would appear to be an invented one, as the petitioner has not taken any steps to trace out the bundle in his advocate's office for 6 years. The petitioner has not produced any supporting material, and even an affidavit of the advocate's clerk has not been filed to substantiate his claim. So, it is totally unbelievable. If this kind of inordinate delay is allowed, that will send a wrong signal to the litigant public as well as the advocates. The petitioner has filed this petition only to harass the respondent, who has been dragged to the Court by the petitioner from the year 2007. The petitioner has filed this petition to drag on the proceedings, since the petitioner has no valid case. The Court has to consider the inconvenience caused to the other party in condonation of a huge delay, like 2123 days in this case. Therefore, the reason stated by the petitioner is not acceptable and hence, the petition may be dismissed.



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7. In support of his contention, the respondent's counsel has filed a list

of dates and events and also relied on the following order of this Court.

(1) Order in C.M.P.No.10044 of 2019 in W.A.SR.No.108120 of 2014, dated 24.04.2019 of Madras High Court in the case of "G.Arokiasamy /v/ The Commissioner, Panchayat Union, Nagapattinam and Others.

(2) Order in C.M.P(MD)Nos.7057, 7059, 7061, 7063 & 7064 of 2024 in W.A(MD)SR.Nos.28747, 28750, 28753, 28756 & 28759 of 2016, dated 13.06.2024 of Madurai Bench of Madras High Court in the case of "The Executive Engineer and Administrative Officer, TNHB, Ellis Nagar, Madurai /v/ V.S.Chandrasekaran & Others."

8. Heard both sides and perused the records in this Civil Miscellaneous Petition. Both sides have argued at length, narrating the facts of the case, which need not be discussed in this petition, as the present petition is filed specifically for condonation of the delay in representation. On perusal of records, it is clear that the petitioner has filed the review petition on 03.06.2019 to review the impugned order passed by this Court in C.M.P.(MD)No.4935 of 2016 on 30.01.2019.



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On perusal of the records, the petitioner obtained a certified copy of the order in C.M.P(MD)No.4935 of 2016 on 26.04.2019 and the review petition was filed on 03.06.2019, so the review petition has been filed in time. There is no dispute that C.M.P.(MD)No.4935 of 2016 has been filed to condone the delay of 2606 days in filing the first appeal and the same was dismissed by this Court with the observation that the said petition is filed for restoration. Therefore, the petitioner has filed the review application within the time limit and the same was returned by this Court raising certain queries on 03.06.2019 and again on 16.12.2019.

9. Thereafter, the returned papers were not been represented within the stipulated time. There is a delay of 2123 days in representing the returned papers. So, the matter is between the party and the Court. The petitioner has stated the reason for the delay that during the shifting of premises by his counsel, the returned papers were mixed with some other case records. Though the respondent's side has raised an objection to the address mentioned in this petition and the Second Appeal in S.A(MD)No.681 of 2021, the learned counsel for the petitioner has replied that he has not mentioned his office address, only the residence address is mentioned. The petitioner's counsel submits that the delay was caused only on his part, hence, the inaction of the advocate should not affect the litigant's right and



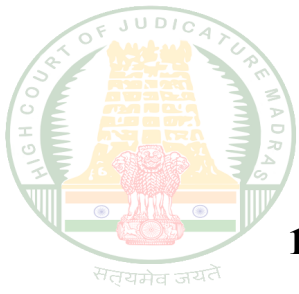
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so, the cost may be fixed on him. This submission cannot be brushed aside,

as there is no substance. Because it is a settled position that any fault on the part of the counsel should not affect the litigant's right. The order relied on by the respondent's counsel relates to condoning the delay in preferring an appeal. But whereas the petition on hand is concerned with condoning the delay in representation of the review petition, which is admittedly filed within the time limit.

10.The petitioner has also stated in his affidavit that he has been repeatedly contacting the advocate and has requested a search of his case records. The petitioner states that he has a *bonafide* reason to show the same. He stated that he has deposited the balance sale consideration on 13.04.2008. Moreover, in respect of the connected case, the petitioner has filed the Second Appeal in S.A(MD)No.681 of 2021, as it is clear from the arguments of both sides, as well as from the dates and events filed by the respondent's side. A deep perusal of the rulings relied on by the petitioner's side shows that the petitioner is deemed to be an affected party as he sought review of the order by way of petition, which was returned for certain defects and the same was represented with a delay, such a delay can be condoned, but at the same time, by imposing heavy costs.

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11. Therefore, considering the above facts and circumstances, this Court is of the opinion that the respondent will not be prejudiced by allowing this petition. At the same time, the respondent should be suitably compensated for the hardship caused by the petitioner. Therefore, considering the facts and circumstances of the case and in the interest of justice, this Court holds that the petition is to be allowed for condoning the delay of 2123 days in representing the review petition in Rev.Aplc(MD)SR.No.19905 of 2019 by imposing certain conditions to meet out the inconvenience caused to the respondent.

12. In the result, this Civil Miscellaneous Petition is allowed on condition that the petitioner shall pay a cost of **Rs.25,000/- (Rupees Twenty Five Thousand only)** to the respondent on or before **27.04.2026**, failing which this petition shall stand automatically dismissed without any further reference to this Court.

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NCC : Yes / No
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Pre - Delivery Order made in
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in
Rev.Aplc(MD)SR.No.19905 of 2019

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