



*C.M.P.(MD)No.12242 of 2025
in S.A(MD)SR No.60186 of 2025*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.02.2026

PRONOUNCED ON : 19.02.2026

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.12242 of 2025

in

S.A(MD)SR No.60186 of 2025

Annai Veilankanni Matha Kebi
through its Managiing Trustee,
Louis P.Rayen.

: Petitioner/Appellant

Vs.

1.Mohammed Abdul Kadhar

2.Sheik Syedali

: Respondents/Respondents

PRAYER in C.M.P(MD)No.12242 of 2025: Civil Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 520 days in filing the second appeal in S.A(MD)SR No.60186 of 2025.

PRAYER in S.A(MD)SR No.60186 of 2025 : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree, dated 21.09.2023 passed in A.S.No.43 of 2022, on the file of the Principal Subordinate Court,



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Tirunelveli, confirming the judgment and decree, dated 19.04.2022, passed in O.S.No.363 of 2013, on the file of I Additional District Munsif, Tirunelveli.

For Petitioner : Mr.M.Thayiba Habiba
for M/s Roy and Roy Associates

For Respondents : Mr.J.Barathan
for Mr.M.Kaliraj

ORDER

The above petition has been filed, invoking Section 5 of Limitation Act to condone the delay of 520 days in filing the Second Appeal, challenging the judgment and decree made in A.S.No.43 of 2022, dated 21.09.2023, on the file of the Principal Subordinate Court, Tirunelveli, confirming the judgment and decree passed in O.S.No.363 of 2013, dated 19.04.2022, on the file of the Principal District Munsif Court, Tirunelveli.

2. The petitioner/appellant, as plaintiff, filed a suit in O.S.No.363 of 2013, on the file of the Principal District Munsif Court, Tirunelveli claiming permanent injunction restraining the defendants and their men from in any



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manner forming a road or interfering with the plaintiff's peaceful possession and enjoyment of II schedule suit property and also for mandatory injunction directing the closure of house frontyard situated in the II schedule of suit property. The respondents/respondents/defendants filed their written statement and contested the suit. The learned Principal District Munsif, after framing necessary issues and after full trial, passed the judgment and decree dated 19.04.2022, dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff filed an appeal in A.S.No.43 of 2022 and the learned Principal Subordinate Judge, Tirunelveli, upon considering the materials available on record and on hearing the arguments of both sides, passed the judgment and decree dated 21.09.2023, dismissing the appeal and thereby confirming the judgment and decree of the trial Court. Challenging the dismissal of the appeal, the plaintiff has filed the present appeal along with the above application to condone the delay of 520 days in filing the Second Appeal.

3. The case of the petitioner canvassed in the delay condonation petition is that after the judgment and decree passed in A.S.No.43 of 2022, on the file of the Subordinate Court, Tirunelveli, the petitioner had to discuss all



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the members of the Trust and had to get consent from the members of the Trust to proceed legally further to prefer the Second Appeal, that subsequently funds were mobilised for filing the appeal and in the meantime, there occurred a delay of 520 days in filing the appeal, that the delay is neither wilful nor wanton, but due to the unfortunate circumstances stated above and that the petitioner will be put to irreparable loss and hardship if the delay is not condoned.

4. The respondents filed their counter affidavit disputing the affidavit averments and further stated that the petitioner has not produced any minutes of the Trust Board meeting or when the Trust Board meetings were held, that the first appeal was dismissed on 21.09.2023, but the Second Appeal was filed only in July 2025, that the petitioner has not mentioned any other sufficient reasons for the huge delay, that the reasons given are not bonafide and the delay has not at all been explained, that the affidavit of the petitioner is very bald and sketchy, that the petitioner has not stated as to how many meetings took place for deciding the issue and how many members had participated in the meetings, that the administrative reasons cannot be taken as



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sufficient cause so as to attract Section 5 of the Limitation Act, that the petitioner's another reason for the delay is that the mobilisation of money for filing the Second Appeal is also not in consonance with the financial status of the petitioner Trust, that the petitioner is a Trust having huge amount in the Bank account and they are transacting regularly, that the Trust is having larger extent of property in its own and it is deriving income, that the petitioner has not made out any ground for interfering with the concurrent judgment of the Courts below, that there is no question of law and no Substantial Question of Law is made out and that therefore, the petition is liable to dismissed.

5. The only point for consideration is whether the delay of 520 days in filing the Second Appeal challenging the judgment and decree made in A.S.No.43 of 2022, dated 21.09.2023, on the file of the Principal Subordinate Court, Tirunelveli is liable to be condoned?

6. Before proceeding further, it is necessary to refer the decision of the Hon'ble Supreme Court in the case of ***H.Guruswamy and Others Vs. A.Krishnaiah Since deceased by Lrs (2025 SCC Online SC 54)*** relied on by



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the learned Counsel for the petitioner and the relevant portions are extracted hereunder:

“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 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.



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17. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. No court should keep the 'Sword of Damocles' hanging over the head of a litigant for an indefinite period of time."

7. The learned Counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** reported in **2024 SCC Online SC 3612**, wherein the Hon'ble Apex Court referred to its earlier decision in ***Union of India Vs. Jahangir Byramiji Jeejeebhoy(D) through his legal heir***, reported in **2024 SCC Online SC 489** and the relevant passages are extracted hereunder :

"5.1. In *Union of India v. Jahangir Byramiji Jeejeebhoy (D) through his legal heir*, wherein, one of us (J.B.Pardiwala, J) was a member, after referring to various decisions on the issue, it was in unequivocal terms observed by this Court that delay should not be excused as a matter of generosity and rendering substantial justice is not to cause prejudice to the opposite party. The relevant passage of the same is profitably extracted below:

"24. In the aforesaid circumstances, we made it very clear that we are not going to look into the merits of the matter as



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long as we are not convinced that sufficient cause has been made out for condonation of such a long and inordinate delay.

25. It hardly matters whether a litigant is a private party or a State or Union of India when it comes to condoning the gross delay of more than 12 years. If the litigant chooses to approach the court long after the lapse of the time prescribed under the relevant provisions of the law, then he cannot turn around and say that no prejudice would be caused to either side by the delay being condoned. This litigation between the parties started sometime in 1981. We are in 2024. Almost 43 years have elapsed. However, till date the respondent has not been able to reap the fruits of his decree. It would be a mockery of justice if we condone the delay of 12 years and 158 days and once again ask the respondent to undergo the rigmarole of the legal proceedings.

26. The length of the delay is 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 appellants, it appears that they want to fix their own period of limitation for 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



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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 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.

27. We are of the view that the question of limitation is not merely a technical consideration. The rules of limitation are based on the principles of sound public policy and principles of equity. We should not keep the 'Sword of Damocles' hanging over the head of the respondent for indefinite period of time to be determined at the whims and fancies of the appellants.

xxx xxx xxx

34. In view of the aforesaid, we have reached to the conclusion that the High Court committed no error much less any error of law in passing the impugned order. Even otherwise, the High Court was exercising its supervisory jurisdiction under Article 227 of the Constitution of India.

35. In a plethora of decisions of this Court, it has been said that delay should not be excused as a matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were



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reasonably diligent in prosecuting the matter and this vital test for condoning the delay is not satisfied in this case.

36. For all the foregoing reasons, this appeal fails and is hereby dismissed. There shall be no order as to costs.”

After referring to the above said decision, the Hon'ble Apex Court observed,

'Applying the above legal proposition to the facts of the present case, we are of the opinion that the High Court correctly refused to condone the delay and dismissed the appeal by observing that such inordinate delay was not explained satisfactorily, no sufficient cause was shown for the same, and no plausible reason was put forth by the State. Therefore, we are inclined to reject this petition at the threshold.'

8. The learned Counsel for the respondents would also rely on the decision of the Hon'ble Supreme Court in ***Shankargir Vs. State of Madhya Pradesh and another passed in Civil Appeal No.14613 of 2025, dated 05.12.2025***, wherein the Hon'ble Apex Court expressed its dismay over the manner in which the High Court had condoned a delay of 1612 days on the mere asking of the State Government. The Hon'ble Supreme Court reiterated that the law relating to limitation and condonation of delay is well-settled and



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that the existence of sufficient cause must be carefully examined before condoning the delay.

9. It is also necessary to refer the decision in ***Thirunagalingam Vs. Lingeswaran and another*** reported in ***2025 Live Law SC 560***, wherein the Hon'ble Apex Court reiterated the legal position that while considering the plea for condonation of delay, the first and foremost duty of the Court is to first ascertain the bona fides of the explanation offered by the party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the Court may consider the merits of the main matter for the purpose of condoning the delay and the relevant portion is extracted hereunder:

“Further, this Court has repeatedly emphasised in several cases that delay should not be condoned merely as an act of generosity. The pursuit of substantial justice must not come at the cost of causing prejudice to the opposing party. In the present case, the respondents/defendants have failed to demonstrate reasonable grounds of delay in pursuing the matter, and this crucial requirement for condoning the delay remains unmet.”



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10. The Hon'ble Supreme Court in ***Pathapati Subba Reddy (died) by L.Rs., and Others Vs. The Special Deputy Collector (LA) ((2024)4 SCR 241***, has summarised the principles in condoning the delay as contemplated under Section 5 of the Limitation Act and the same are extracted hereunder:

“(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



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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 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.”

11. As rightly pointed out by the learned Counsel for the respondents, the Hon'ble Supreme Court in ***H.Guruswamy and Others Vs. A.Krishnaiah Since deceased by Lrs (2025 INSC 53)***, relied on by the learned Counsel for the petitioner referred supra, has also held 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 and the relevant paragraphs are extracted hereunder:



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

12. Bearing the above legal position in mind, this Court proceeds to consider the case on hand.

13. In the present case, as rightly contended by the learned Counsel for the respondents, the petitioner has neither canvassed any valid reason nor furnished any sufficient explanation for the inordinate delay of 520 days. The primary reason put forth is that he had to obtain consent from the members of the Trust to file the Second Appeal; beyond this, no further particulars have been furnished.



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14. As rightly pointed out by the learned Counsel for the respondents, the petitioner has not stated when the Trust meetings were conducted, how many trust members participated, what resolution was passed at such meeting or to why there was a delay in obtaining the consent of the trust members. Further, no documentary evidence has been produced to show when the meetings were convened and when the resolution to prefer the Second Appeal was passed. In any event, obtaining consent from the trust members is an internal affair of the Trust committee and, by itself, cannot be considered as a valid or sufficient ground for condoning the delay.

15. The next reason canvassed is that the funds were mobilised subsequently. But according to the respondents, the trust is owning several properties and is getting good income. Whatever it is, the Hon'ble Supreme Court in *Ajay Dabra Vs. Pyare Ram and others* reported in *AIR 2023 SCC 698* has held that insufficiency of funds is not a sufficient cause for condonation of delay and the relevant portion is extracted hereunder :

“ We do not have a case at hand where the appellant is not capable of purchasing the court fee. He did pay the court fee



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ultimately, though belatedly. But then, under the facts and circumstances of the case, the reasons assigned for the delay in filing the appeal cannot be a valid reason for condonation of the delay, since the appellant could have filed the appeal deficient in court fee under the provisions of law referred above. Therefore, we find that the High Court was right in dismissing [Section 5](#) application of the appellant as insufficient funds could not have been a sufficient ground for condonation of delay, under the facts and circumstance of the case. It would have been entirely a different matter had the appellant filed an appeal in terms of [Section 149](#) CPC and thereafter removed the defects by paying deficit court fees. This has evidently not been done.

16. Considering the above legal position, the reason assigned by the petitioner that the funds were mobilised subsequently cannot be considered as a sufficient cause to condone the delay of 520 days in filing the Second Appeal.

17. As per the settled legal position referred above, the Courts while considering the plea for condonation of delay, the first and foremost duty of the court is to first ascertain the bona fides of the explanation offered by the



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party seeking condonation rather than starting with the merits of the main matter. Only when sufficient cause or reasons given for the delay by the litigant and the opposition of the other side is equally balanced or stand on equal footing, the court may consider the merits of the main matter for the purpose of condoning the delay.

18. When the matter was taken up for enquiry, the learned Counsel for the petitioner would submit that the Courts below erred in fixing the length of subject pathway as 23 feet without considering the fact that no document relating to the description of pathway is available and that since the petitioner has a good case on merits, an opportunity may be granted to prosecute the Second Appeal. As rightly contended by the learned Counsel for the respondents, the Second Appeal is not an automatic right; it is a statutory remedy that can be entertained only upon the High Court being satisfied that the case involves a Substantial Question of Law. It is not merely a question of fact, but the existence on a Substantial Question of Law, as contemplated under Section 100 of Civil Procedure Code, which is a sine



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qua non for the maintainability of a Second Appeal. Hence, the contention of the petitioner that an opportunity should be granted to prosecute the Second Appeal cannot be countenanced.

19. In view of the above, this Court has no hesitation in holding that the petitioner has failed to show any sufficient cause for the inordinate delay of 520 days in filing the Second Appeal. Accordingly, this Court concludes that the petition is devoid of merits and is liable to be dismissed.

20. In the result, the Civil Miscellaneous Petition is dismissed. Consequently, the Second Appeal is rejected at the SR stage itself.

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

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To

- 1.The Principal Subordinate Court, Tirunelveli.
2. I Additional District Munsif Court, Tirunelveli.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-delivery order made in
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