



*C.M.P.(MD)No.12222 of 2025
in S.A.(MD)SR.No.61321 of 2025*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.02.2026

Pronounced on : 06.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.P.(MD)No.12222 of 2025
in S.A.(MD)SR.No.61321 of 2025
and S.A.(MD)SR.No.61321 of 2025

T.Arokiasamy

... Petitioner/
Appellant

Vs.

1.S.John Joseph

2.S.Inbaraj

3.S.David Suresh

...Respondents/
Respondents

Prayer in C.M.P.(MD)No.12222 of 2025 : The Civil Miscellaneous Petition filed under Section 5 of Limitation Act, praying to condone the delay of 1424 days incurred in filing the second appeal against the judgment and decree dated 27.11.2018 passed in A.S.No.148 of 2015 by Ist Additional Sub Court, Tiruchirappalli.

Prayer in S.A.(MD)SR.No.61321 of 2025 : The Second Appeal filed under Section 100 C.P.C., against the judgment and decree dated



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27.11.2018 passed in A.S.No.148 of 2015 by Ist Additional Sub Court, Tiruchirappalli, partly allowing the judgment and decree dated 23.02.2012 passed in O.S.No.316 of 2005 by District Munsif Court, Manapparai.

(in both cases)

For Petitioner : Mr.S.Anand Chandrasekar

For Respondents : Mr.K.S.Kathiravan

COMMON ORDER

The Civil Miscellaneous Petition has been filed invoking Section 5 of Limitation Act seeking orders to condone the delay of 1424 days in filing the second appeal, challenging the judgment and decree made in A.S.No.148 of 2015 dated 27.11.2018 on the file of the First Additional Subordinate Court, Tiruchirappalli, partly allowing the judgment and decree passed in O.S.No.316 of 2005 dated 23.02.2012 on the file of the District Munsif Court, Manapparai.

2. The petitioner is the defendant. The respondents as plaintiffs filed a suit in O.S.No.316 of 2005 on the file of the District Munsif Court, Manapparai to declare that the suit property is belonging to them and for consequential permanent injunction restraining the petitioner / defendant



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and his men from in any manner interfering with the respondents / plaintiffs' peaceful possession and enjoyment of the suit property. The petitioner / defendant filed his written statement and contested the suit. The learned District Munsif, Manapparai, after framing necessary issues and after full trial, passed a judgment and decree dated 23.02.2012 dismissing the suit. Aggrieved by the dismissal of the suit, the respondents / plaintiffs preferred an appeal in A.S.No.148 of 2015 and the learned First Additional Subordinate Judge, Tiruchirappalli, upon considering the materials available on record and on hearing the arguments of both the sides, passed a judgment and decree dated 27.11.2018 partly allowing the appeal and thereby granting the declaration that the respondents / plaintiffs are the title holders of the suit property and confirmed the judgment of the trial Court so far as the dismissal of the permanent prohibitory injunction. Challenging the said judgment and decree, the petitioner / defendant has filed the present second appeal along with the above petition to condone the delay of 1424 days in filing the second appeal.

3. The case of the petitioner canvassed in the delay condonation petition is that the appellate Court passed the judgment and decree on



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27.11.2018, that the petitioner's counsel before the trial Court filed copy application on 01.12.2018 and printing charges were called for on 04.03.2019, which came to be deposited on 08.03.2019, that copies of the judgments and decrees of the trial Court as well as the appellate Court were made ready on 17.09.2019 and the same were delivered to the petitioner's counsel on 13.11.2019, that though the petitioner's counsel assured the petitioner that as soon as he received the copies of the judgments and decrees, he will inform him and hand over the same for filing the second appeal but he failed to do so, that the petitioner's repeated queries to his counsel also did not evoke proper response, that the petitioner received summons from the Subordinate Court, Manapparai on 04.02.2022 with respect to the suit in O.S.No.10 of 2022 filed by the respondents against him seeking the relief of recovery of possession of property involved in the present suit on the basis of the judgment and decree passed in A.S.No.148 of 2015, that the petitioner, upon receipt of summons, contacted his counsel and demanded explanation but no explanation was forthcoming, that after repeated requests, the entire back papers along with copies of the judgments and decrees were handed over to the petitioner only during 3rd week of September 2023, that due to the



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petitioner's old age and poor health condition, he was not in a position to travel to Madurai and instruct his counsel to file the second appeal till April 2024, that the petitioner handed over the papers during April 2024 and his counsel prepared the second appeal and prior to filing of the same, certified copies of the appellate Court records were misplaced by the clerk attached to counsel office and despite diligent search, they could not trace the same and that only during a fortnight ago, the said copies were found to be mixed up with the pending second appeal of the year 2024 in his counsel office and they have taken immediate steps to file the present second appeal.

4. It is the further case of the petitioner that the reasons stated are genuine and bona fide, that the petitioner will be greatly prejudiced and would be deprived of valuable right to the property, if the delay is not condoned and that therefore, the delay of 1424 days in filing the second appeal has to be condoned.

5. The respondents filed a counter affidavit disputing the petitioner's affidavit averments and further stated that subsequent to the judgment



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passed in A.S.No.148 of 2015, the respondents filed a suit in O.S.No.10 of 2022 on the file of the Subordinate Court, Manapparai for recovery of possession against the petitioner in respect of the subject matter of this appeal, that the petitioner had entered into appearance through his advocate in the said suit in O.S.No.10 of 2022 even as early as on 16.06.2022, that thereafter, the petitioner was set ex-parte in the said suit for non-filing of written statement even after taking sufficient time, that the petitioner has then filed an application to set aside the ex-parte decree in I.A.No.1 of 2023 and the said application was allowed on 12.06.2023, that the suit was subsequently referred to mediation but the same did not fructify and that after long pendency of more than four years, trial was commenced in the said suit and is presently at the stage of examination of plaintiffs' side witnesses.

6. In the counter affidavit, the respondents have further stated that the petitioner had all along been participating in O.S.No.10 of 2022 and is contesting the same vehemently, that the petitioner had made all the delaying tactics in prolonging the suit which is for recovery of possession, that filing of the present second appeal along with such inordinate and



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huge delay of 1424 days is also one such feeble attempt of the petitioner to somehow or other stall the suit proceedings in O.S.No.10 of 2022, that the petitioner has not assigned any valid reason explaining the delay in proper perspective, that the petitioner had engaged the very same counsel till date before the trial Court even in the suit in O.S.No.10 of 2022 and is conducting the said case vehemently and as such, there is no proof to substantiate the explanation tendered in the affidavit towards the reason for the delay, that the delay has not been satisfactorily explained by the petitioner, that filing of the present second appeal is nothing but another attempt to prolong the suit in O.S.No.10 of 2022 and to continue his unlawful possession over the suit property and that since the petition is devoid of merits, the same is liable to be dismissed.

7. Before proceeding further, it is necessary to refer 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 condoned the delay of 1612 days on the mere asking of the State Government. The Hon'ble Supreme Court reminded that the



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law is well-settled in terms limitation and condoning delay that sufficient cause has to be looked into.

8. In the case of ***Thirunagalingam Vs. Lingeswaran and another*** reported in ***2025 Live Law SC 560***, the Hon'ble Supreme 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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9. It is necessary to refer the decision of the Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** reported in **2024 SCC Online SC 3612**, wherein, its earlier decision in ***Union of India Vs. Jahangir Byramiji Jeejeebhoy (D) through his legal heir***, reported in **2024 SCC Online SC 489**, was referred and the relevant passages are extracted hereunder :

“5.1.In Union of India Vs. 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 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



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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 be preferred as against the technical considerations. While considering the plea for



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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



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matter of generosity. Rendering substantial justice is not to cause prejudice to the opposite party. The appellants have failed to prove that they were 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.'

10. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***H.Guruswamy and others Vs. A.Krishnaiah since deceased by***



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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.

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



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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.”

11. Bearing the above legal position in mind, let us proceed with the present case.

12. As already noted, in the affidavit filed in support of the petition for condonation of delay, the petitioner has put forth three principal reasons: (i) that his counsel before the trial Court, though having received



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the certified copies of the judgment and decree on 13.11.2019, failed to inform the petitioner; (ii) that, subsequent to the receipt of the said copies, the petitioner, owing to his advanced age, was unwell; and (iii) that the copies of the judgment and decree, which had been handed over to the present counsel on record, were misplaced in the advocate's office by the clerk and were traced only a fortnight prior to the filing of the second appeal.

13. The learned counsel appearing for the respondents would submit that though the petitioner has found fault with his trial Court counsel for non-informing and for not handing over the printed copies of the judgment and decree, the same counsel has been appearing and defending the proceedings in the suit in O.S.No.10 of 2022 filed by the respondents for recovery of possession in pursuance of the judgment and decree made in A.S.No.148 of 2015 now challenged in the second appeal. The said factum is not specifically disputed by the petitioner's side.

14. Admittedly, as rightly pointed out by the learned counsel appearing for the respondents, the petitioner has not produced any iota of



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evidence to prove his ill-health and the consequent inability to travel to Madurai for engaging a counsel.

15. Though the petitioner has contended that the certified copies of the judgment and decree were misplaced by the clerk of his present counsel, he has not furnished any particulars as to when the said copies were handed over to the present counsel on record, when the alleged misplacement was noticed or intimated, and when the copies were eventually traced.

16. As rightly contended by the learned counsel appearing for the respondents, except for the bald averments regarding ill-health and misplacement of records in the advocate's office, the petitioner has not produced any iota of evidence to substantiate the same.

17. As already pointed out, it is the specific case of the respondents that the petitioner has been actively participating in the proceedings in O.S. No.10 of 2022. More importantly, he entered appearance through counsel on 16.06.2022 and, upon being set ex parte on 28.09.2022, filed



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an application in 2023 to set aside the ex parte decree, which came to be allowed on 12.06.2023. Thereafter, the matter was referred to mediation, which ended in failure, and the trial has since commenced and is at the part-heard stage. In such circumstances, when the petitioner was actively pursuing other proceedings before the trial Court, he has failed to offer any acceptable or satisfactory explanation for not taking steps to file the present second appeal within time.

18. The learned counsel appearing for the petitioner would submit that, though the trial Court dismissed the suit filed by the respondents, the first appellate Court, by partly allowing the appeal, granted the relief of declaration and, therefore, the petitioner was constrained to file the second appeal. He would further contend that, since the judgment under challenge is one of reversal, the petitioner ought to be afforded an opportunity to prosecute the second appeal and, for that purpose, the delay deserves to be condoned.

19. It is well settled, as noticed supra, that while considering a plea for condonation of delay, the Court should not ordinarily delve into the



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merits of the case. The merits may be looked into only where sufficient cause for the delay is made out and the equities between the parties are more or less balanced. In the case on hand, as already pointed out, the reasons put forth, by no stretch of imagination, can be construed as sufficient cause for condoning the inordinate delay of 1424 days; moreover, the said reasons have not been substantiated by any acceptable evidence. It is also to be borne in mind that a second appeal is not a matter of right, but lies only at the discretion of the High Court, subject to its satisfaction that the case involves a substantial question of law, as contemplated under Section 100 of the Code of Civil Procedure. It is not a mere re-appreciation of facts. Hence, the contention of the petitioner that he should be afforded an opportunity to prosecute the second appeal cannot be accepted.

20. In view of the above, this Court has no hesitation in holding that the petitioner has failed to establish any sufficient cause for the inordinate delay of 1424 days in filing the second appeal. Consequently, the petition, being devoid of merits, is liable to be dismissed.



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21. In the result, this Civil Miscellaneous Petition is dismissed.

Consequently, S.A.(MD)SR.No.61321 of 2025 is rejected at SR stage itself.

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NCC :yes/No
Index :yes/No
Internet:yes/No
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To

- 1.The District Munsif,
Manapparai.
- 2.The First Additional Subordinate Judge,
Tiruchirappalli.



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Pre-Delivery Order made in
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Dated : 06.03.2026