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C.M.P.(MD) No.10954 of 2021

in

S.A.(MD) SR No.46901 of 2015

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 30.03.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM**

C.M.P.(MD) No.10954 of 2021

in

S.A.(MD) SR No.46901 of 2015

and

S.A.(MD) SR No.46901 of 2015

T.Lakshmi

... Petitioner / Appellant

vs.

1.M.Vasanth

2.P.Subbiah

3.T.Uma Murugeswari

4.P.Thangapandi

5.N.Balu

6.M.Gnanapandithan

7.State

represented through its  
District Collector  
Collectorate Buildings  
Sivagangai

8.The Special Tahsildar  
Adi Dravidar Welfare Department  
Collectorate Campus  
Sivagangai

... Respondents / Respondents

**Page 1 of 10**



WEB COPY



**C.M.P.(MD) No.10954 of 2021**

**in**

**S.A.(MD) SR No.46901 of 2015**

**PRAYER (in C.M.P.(MD) No.10954 of 2021):-** Miscellaneous Petition filed under Order XLI Rule 3A of the Code Civil Procedure, 1908, to condone the delay of 2575 days in filing the appeal.

**PRAYER (in S.A.(MD) SR No.46901 of 2015):-** Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, against the Judgment and Decree, dated 23.11.2007, passed in A.S.No.81 of 2006, on the file of the learned Subordinate Judge, Sivagangai District, confirming the Judgment and Decree, dated 21.10.2005, passed in O.S.No.27 of 2003, on the file of the Additional District Munsif, Sivagangai.

For Appellants : Mr.A.C.Arun Kumar

### **ORDER**

This civil miscellaneous petition is filed to condone the delay of 2575 days in filing the second appeal.

**2.** The petitioner states that she is a senior citizen and suffering from ailments. Therefore, she could not come over to Madurai and make arrangements for filing appeal.



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**3.** The learned counsel appearing for the petitioner states that the appeal was presented into the Court as early as on 31.07.2008, but the appeal papers could not be traced out in the office of the Court for long years as the papers were returned.

**4.** A perusal of the entire case bundle reveals that there is no proof to establish that the appeal was filed on 31.07.2008. Contrarily, one vakalat nama of Sri.M.S.Balasubramania Iyer is available in the case bundle, which shows that the said vakalat was filed on 16.10.2015. However, there is no SR number or other details available in the vakalat to establish that the vakalat was properly filed before the Court. Mere affixing a seal of the Madras High Court is insufficient as such filing of papers must be registered in the appropriate register maintained by the Registry. Even other wise also, the said vakalat was filed in the year 2015 and not in the year 2008. Except this reason, there is no other reason available in the petition.

**5.** Unconardonable delay cannot be condoned in a routine manner. Law of limitation is substantive. Litigations / appeals are expected to be filed



WEB COPY



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within the period of limitation as contemplated under the Statutes. Rule is to follow limitation. Condonation of delay is an exception. Exceptions are to be exercised discreetly, if the reasons furnished are genuine and acceptable. The Courts are vested with the power of discretion to condone the delay, that does not mean that enormous delay in instituting the suit or appeal is to be condoned mechanically. Undoubtedly, if the reasons are candid and convincing, then the Courts are empowered to exercise its power of discretion for the purpose of condoning the delay. Power of discretion is a double-edged weapon. Thus, discretionary powers are to be exercised cautiously and uniformly so as to avoid any prejudice to either of the parties. Exercise of power of discretion if made excessively, it would defeat the purpose and object of the law of limitation. The Courts are expected not to travel beyond the permissible extent, so as to condone the enormous delay in a routine or mechanical manner. Power of discretion is to be exercised to mitigate the injustice, if any occurred to the litigants.

**6.** A fine distinction is to be drawn in respect of 'acceptability' and 'unacceptability', as far as the condonation of delay is concerned. The reasons and its genuinity are important for condoning the delay. It became



WEB COPY



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**S.A.(MD) SR No.46901 of 2015**

unnecessary that the Courts have to consider the precedents and condone the delay thereafter or reject the same. There are judgments for and against, but predominantly the facts, circumstances and the genuinity of the reasons of each case plays a pivotal role in considering the relief of condonation of delay.

**7.** Question may arise the purpose and object of the law of limitation as refusal of condonation of delay sometime causes denial of rights to the litigants. However, there is a definite purpose for prescription of period of limitation for institution of litigations / appeals. Different time limits are prescribed for different kinds of litigations. However, there is a strong reason for such prescription of limitation in various statutes. The litigants are always expected to be vigilant over their rights and liabilities, duties and responsibilities. If any citizen of our great Nation is allowed to exercise his right at his whims and fancies without reference to the law of limitation, circumstances may arise that the rights of other fellow citizens are prejudiced or infringed. Rights cannot be exercised in an unguided manner. All rights, including fundamental rights under the Constitution of India, are qualified and subject to various restrictions under other laws in-force. Thus, the rights of citizen and corresponding duty towards the other fellow citizen are to be



WEB COPY

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**in**

**S.A.(MD) SR No.46901 of 2015**

balanced in such a manner without causing any prejudice, which resulted in prescription of law of limitation. Exercise of right by a citizen cannot infringe the right of other fellow citizen. Rights and duties are corresponding and therefore, the law requires a limitation for institution of litigations / appeals.

**8.** Any citizen, who slept over his right, cannot wake up one fine morning and knock the doors of the Court for redressal of his grievances. The person, who slept over his right, has to necessary loose his right on account of efflux of time, which caused expiry of the cause. In the event of institution of appeal or litigation after a prolonged period, the right of defence will also be affected and further it will lead to unnecessary harassment for a prolonged period. All these mitigating factors are to be considered while condoning the huge delay in instituting the litigations / appeals. Thus, the law of limitation has got a definite reasoning and logic. Various time limitations prescribed under many statutes are adopting the principles of “Doctrine of Reasonableness”.



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**C.M.P.(MD) No.10954 of 2021**

**in**

**S.A.(MD) SR No.46901 of 2015**

**9.** The principles of reasonableness would be adopted with reference to the nature of litigations to be instituted. Various time limits are prescribed for civil litigations, appeals and other varieties of litigations, considering various factors and by applying the doctrine of reasonableness. Thus, the law of limitation became substantive and to be followed scrupulously in all circumstances and on exceptional cases, the delay is to be condoned, if the reasons are genuine and acceptable.

**10.** Exceptions can never be adopted as a rule. Exceptions are to be exercised exceptionally and the power of discretion is to be exercised discreetly, so as to mitigate the injustice if any caused. Condoning long delay in a routine or mechanical manner by the Courts cannot be considered as a good practice. It would result to an injustice in respect of the other parties to the litigation.

**11.** Another point to be considered is that whenever the condone delay petitions are taken into consideration, there is a frequent representation from the parties that the delay is to be condoned by imposing heavy costs or



WEB COPY

**C.M.P.(MD) No.10954 of 2021**

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**S.A.(MD) SR No.46901 of 2015**

otherwise. This Court is of the humble opinion that by imposing heavy costs, long delay cannot be condoned. In the event of condoning enormous delay by imposing costs, undoubtedly, the legal principles are not only compromised, but 'justice' is not done to the parties. The Courts are not supposed to compromise the legal principles under the guise of imposing heavy costs. Costs are imposed on certain exceptional circumstances, when the Courts form an opinion that lapses are minor and on account of such minor lapses, the parties should not suffer or their rights cannot be denied. However, costs cannot be in terms with reference to the number of days of delay. It is not an arithmetic principle, where long delay is to be condoned with heavy costs and meagre delay is to be condoned with meagre costs. Such a principle is opposed to public policy and therefore, this Court is not prepared to accept such concept of imposing heavy costs for condoning enormous delay by violating the law of limitation, which is substantive and also the legal principles to be followed.

**12.** Once the delay petition is filed, it is to be dealt with independently by considering the reasons furnished by the petitioner. If the reasons are candid and convincing, then the petitions are to be considered.





WEB COPY

**C.M.P.(MD) No.10954 of 2021**

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**S.A.(MD) SR No.46901 of 2015**

However, condonation of delay cannot be allowed merely based on the merits in the main appeal. Of course, it is not a trite law to follow. However, in certain circumstances, the Courts can take a lenient view if the reasons are genuine. If the delay is about three months or upto five or six months, the Courts may take a lenient view, but not in respect of longer delay.

13. In such view of the matter, this Court is not inclined to condone the delay of 2575 days in filing the appeal. Accordingly, the civil miscellaneous petition is dismissed. Consequently, S.A.(MD) SR No.46901 of 2015 is rejected at the SR stage itself. No costs.

**30.03.2022**

Index : Yes / No

Internet : Yes / No

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To:

1.The Subordinate Judge,  
Sivagangai District.

2.The Additional District Munsif,  
Sivagangai.

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**Page 9 of 10**



WEB COPY



**C.M.P.(MD) No.10954 of 2021**

**in**

**S.A.(MD) SR No.46901 of 2015**

**S.M.SUBRAMANIAM, J.**

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**and**

**S.A.(MD) SR No.46901 of 2015**

**30.03.2022**

**Page 10 of 10**