

**(2011) 10 MAD CK 0090**

**In the Madras High Court**

**Case No :** Review Application (MD) No. 20 of 2011

Anditchi, Ramakrishnan and Periannan

APPELLANT

Vs

Muniyayee (Died), Shanmuganathan, Raja and Muthulakshmi  
(R2 recorded and RR3 and 4 are brought on record as L.Rs.  
of the deceased R1 vide order dated 12.09.2011 and made in  
M.P. (MD) No. 1 of 2011 in Rev. Applc. (MD) No. 20 of 2011  
by MDJ)

RESPONDENT

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**Date of Decision :** 12-10-2011

**Acts Referred:**

**Citation :** (2011) 10 MAD CK 0090

**Hon'ble Judges :** G. Rajasuria, J

**Bench :** Single Bench

**Advocate :** R. Sathiskumar, for the Appellant; P.T.S. Narendravasan for 2nd  
Respondent and No Appearance for Respondents 3 and 4, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Mr. Justice P.R. Shiva Kumar

1. The thumb nail sketch of the germane facts, absolutely necessary and relevant for the disposal of this petition would run thus:

The petitioner presented the Second Appeal by paying a meagre Court fee of Rs. 300/-, whereupon it was returned for paying the deficit Court fee and for complying with other remarks. Further, there was delay in representing the same. Hence, M.P. (MD) No. 1 of 2010 was filed. It so happened that the said M.P. (MD) No. 1 of 2010 was listed before the then Hon'ble Judge in charge of the case, who condoned the delay in representing the Second Appeal by passing an order. The operative portion of the said order would run thus:

3. Considering the reason given in the petition and also length of delay, this petition can be allowed on fulfilment of the terms as stated infra:

4. In fine, the petitioners are directed to pay Rs. 1000/- (Rupees one thousand

only) to the High Court Legal Services Committee attached to this Bench on or before 06.12.2010. Failing which this petition will be dismissed.

Subsequently, before one other Hon"ble Judge, M.P.(MD) No. 2 of 2010, which was one to get condoned the delay in paying the deficit Court fee, was listed, whereupon the said Hon"ble Judge dismissed the petition by passing an order to the effect that there was no sufficient reason for condoning the delay in paying the deficit Court fees. Being aggrieved by and dissatisfied with the same, this review application has been filed.

2. The learned counsel for the second respondent has no objection for allowing this petition. The second respondent died. No appearance for respondents 3 and 4, despite notice having been served. As of now, the contesting respondent has no objection for allowing this petition.

3. The learned counsel for the petitioner would implore and entreat by placing reliance upon the averments made in the affidavit accompanying the review application, that the reasons found set out in the affidavit accompanying M.P. (MD) No. 1 of 2010 for getting the delay condoned in representing the Second Appeal and the reasons found set out in the affidavit accompanying M.P.(MD) No. 2 of 2010 are one and the same and in such a case after allowing M.P.(MD) No. 1 of 2011, there might not be any justification in dismissing M.P.(MD) No. 2 of 2010. He would also submit that the order passed in M.P.(MD) No. 1 of 2010 by this Court could not be utilised in view of the dismissal order passed in M.P.(MD) No. 2 of 2010.

4. M.P.(MD) No. 1 of 2010 was allowed by one Hon"ble Judge of this Court by accepting the reasons for getting the delay condoned in representation of the Second Appeal. However, one other Hon"ble Judge of this Court rejected M.P. (MD) No. 2 of 2010 on the ground that the reasons found set out were not sufficient. As such an impasse has crept in. Whereas in the interest of justice and in view of maxim "*audi alteram partem*" an opportunity could be given to the petitioner to get the Second Appeal heard by this Court. Hence, I am of the view that one more opportunity could be given and that too in the wake of no objection forth-coming from the contesting respondent.

5. Accordingly, the Review Application is allowed and the order of this Court dated 19.01.2011 made in M.P. (MD) No. 2 of 2010 in S.A.(MD) No. SR 8818 of 2006 is set aside and the delay of 1716 days in paying the deficit Court is condoned subject to payment of a cost of Rs. 2,000/- (Rupees Two Thousand only) by the petitioner to the second respondent within a week from today, failing which this application shall stand dismissed automatically without any further reference to this Court.

6. On such payment, the Registry is directed to number the Second Appeal, if it is otherwise in order and list the same for admission before the Court.