



C.R.P.(PD)(MD)Nos.1814 & 1815 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2026

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THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)(MD)Nos.1814 & 1815 of 2023
and C.M.P.(MD)No.9058 of 2023

B.Sakthimayil

... Petitioner in
both C.R.Ps.

Vs

S.Saravanan

... Respondent in
both C.R.Ps.

COMMON PRAYER: Civil Revisions Petition filed under Article 227 of the Constitution of India, praying to set aside the order passed in I.A.Nos.621 and 622/2022 in I.A.No.715/2019 in O.S.No.116/2018 on the file of the II Additional Sub Court, Madurai dated 30.03.2023.

For Petitioner : Mr.J.Jeyakumaran
(In both C.R.Ps)

For Respondent : Mr.V.Nagendran
(In both C.R.Ps)

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the trial Court dismissing the applications filed by the



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petitioner seeking to condone the delay of 212 days in filing the petition to restore the petition filed by the petitioner in I.A.No.715 of 2019 in O.S.No.116/2018 to condone the delay of 419 days in filing the application to set aside the *ex parte* decree passed against the petitioner on 09.08.2018 and to restore I.A.No.715/2019 which was dismissed for default by order dated 21.01.2021.

2. The respondent herein filed a suit for specific performance. The said suit was decreed *ex parte* on 09.08.2018, owing to failure of the petitioner to file written statement. According to the petitioner, he was affected with Jundice and hence, he could not file written statement in time. Hence, he filed a petition in I.A.No.714/2019 to set aside the *ex parte* decree. Since there was a delay in filing the petition to the said IA, petitioner filed condone delay petition in I.A.No. 715/2019, seeking to condone the delay of 419 days in filing Order XI Rule 13 petition. The said application filed by the petitioner was dismissed for default on 21.01.2021. Hence, the petitioner filed I.A.No. 72 of 2022, to restore I.A.No.715 of 2019. It is stated that the application filed by the petitioner to restore the dismissed IA was misplaced and hence, a complaint was given by the petitioner. Later, the



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misplaced papers were traced out and the IA was numbered on 03.03.2022. When the matter was posted on 28.04.2022 for serving notice of appearing for the respondent, owing to the default of the petitioner, it was dismissed for default. Thereafter, the instant applications have been filed by the petitioner seeking to restore the petition in I.A.No.715/2019 with the delay of 212 days and to condone the delay in filing restoration petition. The trial Court by the impugned orders dismissed the petitions narrating the sequence of events mentioned above.

3. The learned counsel appearing for the petitioner would submit that the numbering of I.A.No.72/2022 was not known to the petitioner. Initially, the papers were misplaced and on a complaint given by the petitioner, it was traced out and numbered suddenly and hence, the petitioner could not take steps to serve the other side.

4. This Court heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.



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5. It is seen from the records, the petitioner, without filing an application to restore I.A.No.72/2022, which was dismissed for default, filed the instant applications in I.A.Nos.621 and 622/2022. The instant applications filed by the petitioner in I.A.Nos.621 and 622/2022 to condone the delay of filing the application to restore I.A.No.715/2019 and to restore I.A.No.715/2019, which was dismissed for default are not at all maintainable in the light of the dismissal of I.A.No.72/2022. The proper course for the petitioner is to file an application to restore I.A.No. 72/2022, which was dismissed for default on 28.04.2022. Instead of restoring the said application, the petitioner straightaway filed another application seeking to restore I.A.No.715/2019. When the application in I.A.No.72/2022, which was filed to restore I.A.No.715/2019, was dismissed for default, the petitioner is not entitled to file another application seeking restoration of I.A.No.715/2019 instead of seeking restoration of I.A.No.72/2022. Therefore, the trial Court ought not to have numbered the instant applications in I.A.Nos.621 and 622/2022. On the other hand, it should have returned the present applications on the ground that the earlier application filed by the petitioner seeking restoration of I.A.No.715/2019 was already dismissed. The trial Court committed an error in numbering I.A.Nos.621 and 622/2022 and passing



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orders on its merits. Therefore, the impugned order is set aside and the trial Court is directed to strike off I.A.Nos.621 and 622/2022, from its file and return the applications mentioning the dismissal of I.A.No.72 of 2022. If the petitioner is so advised, it is open to him to file a petition to restore I.A.No.72/2022. If any application is filed by the petitioner to restore I.A.No.72/2022, with condone delay petition, if any, the same shall be considered in accordance with law.

6. With these directions, these Civil Revision Petitions stand disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

02.07.2026

NCC : Yes / No
Index : Yes / No

vsm

To

1. II Additional Sub Court, Madurai
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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S.SOUNTHAR, J.

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