

C.R.P(MD)No.2003 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2026

CORAM

THE HON'BLE MR. JUSTICE S.SOUNTHAR

C.R.P.(MD)No.2003 of 2023

and

C.M.P(MD)No.10021 of 2023

P.R.Chinnasamy

.. Petitioner

Vs.

1.Periyasamy

2.Meenakshi

3.Samiyathal

.. Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal orer made in I.A.No.1 of 2022 in O.S.No.441 of 2010 on the file of the learned Principal District Munsif Court, Karur, dated 07.06.2023.

For Petitioner : Mr.S.Gokul Raj

For Respondents : Mr.R.Nireshkumar

* * * * *



C.R.P(MD)No.2003 of 2023

WEB COPY

ORDER

This Civil Revision Petition has been filed challenging the order passed by the trial Court dismissing the application filed by the petitioner to condone the delay of 991 days in filing a petition to set aside the ex parte decree.

2. The respondents instituted a suit seeking the reliefs of declaration, permanent injunction and mandatory injunction. The suit was decreed ex parte against the petitioner on 12.01.2017. Thereafter, on 30.10.2019, the petitioner filed a petition to set aside the ex parte decree along with a petition to condone the delay of 991 days in filing the said application. The trial Court dismissed the petition for condonation of delay. Aggrieved thereby, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioner submitted that during the relevant period, the petitioner was suffering from urinary tract infection. Owing to his illness, he could not contact his counsel and give appropriate instructions for filing the petition to set aside the ex parte decree. It was further submitted that the petitioner has a good case on merits and, therefore, he seeks for allowing of this petition.



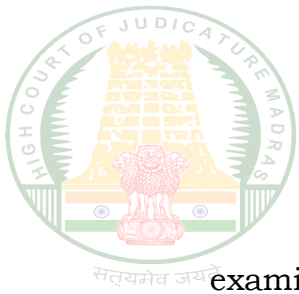
WEB COPY

4. Per contra, the learned counsel appearing for the respondents, by drawing the attention of this Court to the order passed by the trial Court, submitted that the petitioner had taken inconsistent and contradictory stands before the trial Court. It was therefore contended that the trial Court had rightly dismissed the application and that the impugned order does not warrant any interference.

5.This Court has carefully considered the rival submissions and perused the materials available on record.

6.In the affidavit filed in support of the petition for condonation of delay, the petitioner stated that the ex parte decree was passed on 12.01.2017 and that he could not take steps to set aside the decree within the prescribed time. According to him, he contacted his trial counsel on 20.01.2017 and instructed him to take necessary steps to set aside the ex parte decree. However, his counsel failed to do so, and therefore, after engaging another counsel, the present application came to be filed.

7.Before the trial Court, the petitioner examined himself as P.W. 1 and marked the doctor's certificate as Ex.P1. During his cross-



C.R.P(MD)No.2003 of 2023

WEB COPY

examination, the petitions filed in E.A.Nos.6 and 10 of 2019 were marked as Exs.P2 and P3, while Exs.R1 and R2 were also marked on the side of the respondent.

8.The trial Court found that Ex.P1, the doctor's certificate, certified that the petitioner had suffered from urinary tract infection only during the period from 20.07.2018 to 10.08.2018. However, in the affidavit filed in support of the petition, the petitioner had stated that he was suffering from urinary tract infection even in January 2017. Thus, the petitioner's own document, namely Ex.P1, belies the averments made in the affidavit.

9.The trial Court also found that the petitioner had entered appearance through counsel in E.P.No.67 of 2017 on 14.06.2018. The present application has been filed one year thereafter. Despite having engaged counsel in the execution proceedings, the petitioner did not take any steps to file a petition to set aside the ex parte decree. If the petitioner was in a position to engage a counsel and contest the execution proceedings, there is no plausible explanation as to why he failed to instruct the very same counsel to file an application to set aside the ex parte decree. Therefore, the plea that he was prevented from approaching the Court on account of illness cannot be accepted.



C.R.P(MD)No.2003 of 2023

WEB COPY

10. In view of the above, the reasons assigned by the petitioner do not constitute sufficient cause for condoning the inordinate delay of 991 days. The trial Court, on a proper appreciation of the oral and documentary evidence, rightly came to the conclusion that the petitioner had failed to establish sufficient cause for the delay and consequently dismissed the application. This Court does not find any illegality, infirmity or perversity in the order passed by the trial Court warranting interference.

11. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.06.2026

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

To
1. The Sub Court, Uthamapalayam.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.2003 of 2023

S.SOUNTHAR, J.

skn

C.R.P.(MD)No.2003 of 2023
and
C.M.P(MD)No.10021 of 2023

29.06.2026