

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 27.09.2016**

**CORAM**

**THE HONOURABLE MR.JUSTICE T. MATHIVANAN**

**Civil Revision Petition (PD) Nos.5179 & 5180 of 2011 &  
M.P.No.1 of 2011 in CRP (PD) No.5179 of 2011**

1. M.Natarajan

2. S.Malathi

3. K.Rajeswari

4. V.Karuppasamy

... Petitioners in both CRPs

Versus

N.A.Rajendran

... Respondent in both CRPs

Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the order dated 30.05.2011 passed in I.A.Nos.987 of 2010 and I.A.No.1131 of 2010 in O.S.No.170 of 2005 on the file of the District Munsif, Avinashi.

For Petitioners : Mr.N.Damodaran

For Respondent : No appearance

**COMMON ORDER**

These memorandum of Civil Revisions have been directed against the fair and decretal Order dated 30.05.2011 and made in the common order in I.A.Nos.987 of 2010 and 1131 of 2010 in the suit in O.S.No.170 of 2005 on the

file of the District Munsif, Avinashi.

2. The revision petitioners are the defendants 1 to 4 in the suit whereas the respondent is the plaintiff. When the matter is taken up for hearing Mr.N.Damodaran, learned counsel appearing for the revision petitioners is present. The respondent, despite service of notice, has not chosen to appear before this Court, either in person or through his counsel. Therefore, he is called absent.

3. Heard Mr.N.Damodaran, learned counsel for the petitioners. Perused the grounds in both the revisions along with the impugned common order. Having regard to the relevant facts and circumstances, the following Order is being passed on merits in the absence of the respondent.

4. It is manifested from the records that the respondent herein, who is the plaintiff in the suit, has filed the suit in O.S.No.170 of 2005 as against the revision petitioners / defendants and thereby sought the relief of mandatory injunction directing the revision petitioners 1 to 3 to execute the sale agreement with him favour after endorsing the payment of Rs.26,70,000/- and mentioning the remaining amount of Rs.2,50,000/- which is to be paid as balance or return back the agreement dated 26.07.1999 to him. Further, he has also sought the relief of permanent injunction to restrain the revision petitioners and their men in any way resorting to further sale proceeds without his concurrence. The said suit was

resisted by the revision petitioners by filing their written statements.

5. It appears from the affidavit filed by the respondent in the application in I.A.No.987 of 2010, that the above suit was listed for trial on 11.08.2008. On that day, he was not able to appear and there was no representation on his behalf. Under these circumstances, the said suit was ordered to be dismissed for default. For restoring the suit, he ought to have filed an application under Order IX Rule 9 of the Code of Civil Procedure within the prescribed period of 30 days. But, since there was a delay of 407 days in filing an application for restoration of the said suit, the application in I.A.No.987 of 2010 was filed under section 5 of the Limitation Act to condone the said delay of 407 days. Simultaneously, he has also filed another application in I.A.No.1131 of 2010 under Order 9 Rule 9 of the Code of Civil Procedure to restore the suit. Both the applications were numbered. Those applications were strenuously resisted by the revision petitioners by filing their counter affidavits. Without considering the objections raised by the revision petitioners, the learned trial Judge had proceeded to hear both the applications together and passed a common order on 30.05.2011 and thereby he had allowed the application in I.A.No.987 of 2010 on payment of cost of Rs.2000/- and he had also observed that on payment of cost of Rs.2000/- in the application in I.A.No.987 of 2010, the other application in I.A.No.1131 of 2010 would also be allowed. Challenging the impugned common order, the revisions petitioners stand before this Court with these revision petitions.

6. Mr.N.Damodaran, learned counsel for the revision petitioners, while advancing his arguments, has invited the attention of this Court to the affidavit filed by the respondent in both the applications. In para 3 of the Affidavit filed in support of the application in I.A.No.987 of 2010, he has stated that the suit was dismissed for default on 11.08.2008. He would further state that since the matter was posted in the list in the name of his earlier counsel Mr.Sethumadhavan at Udumalpet, his present counsel was not able to notice the proceedings of the suit and therefore, the suit was dismissed for default.

7. In this connection, Mr.N.Damodaran has also invited the attention of this Court to the counter statement filed by the revision petitioners in both applications in I.A.No.987 of 2010 and I.A.No.1131 of 2010. In para 10, the revision petitioners have stated that the respondent/plaintiff had not calculated the delay correctly and that the date of knowledge of delay had been wrongly given by him. They would further state that the respondent had participated in the criminal proceedings before the High Court of Judicature at Madras in CrI.O.P.No.3688 of 2005 and the same was dismissed on 04.12.2008 against which an appeal was preferred before the Honourable Supreme Court of India and in those proceedings, the decree of the suit in O.S.No.170 of 2005, which was dismissed, was also referred to .

8. In this connection, Mr.N.Damodaran has submitted that when the respondent/plaintiff was able to attend the proceedings before the High Court as well as the proceedings before the Supreme Court, he had not properly explained as to why he had not participated in the trial proceedings before the trial Court. Further, he would state that the reasons adduced by the respondent/petitioner, in his affidavit filed in support of the applications could not be considered as sufficient cause to condone the delay of 407 days.

9. Further, the learned counsel has also made reference to the impugned order, wherein the learned trial Judge has observed that in case, if the petitions were allowed, the revision petitioners/defendants had to only face the trial proceedings and no prejudice would be caused. On the other hand, if the petitions are dismissed, the respondent/plaintiff would not be in a position to hold any document for the alleged payment of Rs.24,00,000/-.

10. In this connection, Mr.N.Damodaran, would submit that the respondent/plaintiff had failed to show sufficient cause to condone the delay of 407 days and that the office of the registry of the trial Court had committed a serious error in numbering the restoration petition simultaneously along with the petition filed under section 5 of the Limitation Act, despite several rulings were passed by this Court. Keeping in view of all the above facts, this Court is of

considered view that the revisions petitions are deserved to be allowed.

11. Accordingly, these Civil Revision Petitions are allowed and the impugned common Order dated 30.05.2011 and made in I.A.Nos.987 of 2010 and 1131 of 2010 in the suit in O.S.No.170 of 2005 is set aside and the applications in I.A.Nos.987 of 2010 and 1131 of 2010 are dismissed. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.

**27.09.2016**

Index:yes/no  
Internet:yes

vrc

To

The District Munsif,  
Avinashi.

**T.MATHIVANAN, J.,**

vrc

**C.R.P.(PD) No.5179 & 5180 of 2011**

**27.09.2016**