

**IN THE HIGH COURT OF JUDICATURE AT MADRAS****DATED: 21.12.2016****CORAM****THE HONOURABLE Mr.JUSTICE M.V.MURALIDARAN****CRP(PD)No.668 of 2012  
and  
M.P.No.1 of 2012**

Sivakami

... Petitioner

Vs.

Shanmugam

... Respondent

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decreetal order dated 12.11.2011 made in I.A.No.886 of 2009 in O.S.No.165 of 2008, on the file of the learned District Munsif Court at Gobichettipalayam.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.R.N.Amarnath

**ORDER**

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The case of the revision petitioner is that he as plaintiff has filed the above suit in O.S.No.165 of 2008 for specific performance as against the respondent herein on the basis of a sale agreement dated

21.05.2007. According to the revision petitioner a sale agreement was entered into between the revision petitioner and the respondent herein in respect of suit schedule of property. The sale consideration was arrived at Rs.60,000/- in which an advance of amount Rs.46,000/- was paid on the date of agreement i.e. 25.05.2007 by the revision petitioner and the balance of Rs.14,000/- was agreed to be paid within a period of 1 year from the date of sale agreement. However, despite of the offering of balance sale consideration by the revision petitioner within the stipulated time, the respondent never turned up to receive the balance sale consideration and thereby failed to execute the sale deed in favour of the revision petitioner, hence the above suit. The said suit came to be decreed Ex-parte on 23.07.2008, due to the non appearance of the respondent. Thereupon the revision petitioner filed Execution Petition and in furtherance the sale deed was executed on 16.03.2009 and the possession was taken on 14.08.2009.

2. When the facts remain so, the respondent herein has filed an application to set aside the ex-parte decree passed in the above suit, on the ground that no notice was served upon the respondent in the suit. Since the application for setting aside the ex-parte decree was filed beyond the prescribed limitation, the respondent filed a petition

under Section 5 of the Limitation Act to condone the delay of 250 days in filing the application to set aside the ex-parte decree.

3.The said application though not supported by bonafide or sufficient cause for the delay in filing, the same came to be mechanically allowed by the Learned trial Judge by imposing a cost of Rs.1000/- on the respondent. In fact both the applications namely delay condonation application and application to set aside ex-parte decree is not at all maintainable and the same are liable to be dismissed on law and on facts. The trial Court however erred in allowing the respondent's Interlocutory Application in I.A.No.727 of 2005 by imposing a cost of Rs.1000/- to be paid as compensation to this revision petitioner. The said order of allowing the respondent's application to condone the delay of 250 days in filing the Ex-parte set aside application is impugned herein.

4.The learned counsel for the revision petitioner contends that the Trial Court has erred in allowing the inordinate delay of 250 days in filing the Ex-parte set aside petition. Though the respondent herein failed to explain the reasons behind the delay in filing the set aside application and that he has refused the notice in the suit, the trial

Court has mechanically condoned the delay by taking a liberal approach. The order of the trial Court is contrary to the settled law that in case of delay in filing any application, the petitioner is bound to explain each and every day delay in order to condone it, furthermore notice in the suit was duly sent to the address of the respondent as stated in a release deed dated 15.09.2006, which stood executed by the respondent herein as well as his family members. The respondent herein despite wantonly evaded the service of summons at the earlier point of time, but now has filed the application, as if he got knowledge of the Decree only on 28.04.2009. The application is being filed with an ulterior motive to harass the revision petitioner, besides to prevent the revision petitioner from enjoying the fruits of Decree.

5.The learned counsel for the respondent contends that the respondent was totally unaware of above said suit filed against him by the revision petitioner, since no summon stood served on him in the said suit. The respondent got knowledge of the suit only on 28.04.2009, when the revision petitioner had involved in an altercation with the neighbour resident of the suit property, claiming that the suit property was purchased by him through Court. In fact there was no such alleged sale agreement entered upon between the revision

petitioner and the respondent. Therefore the delay is neither wanton nor willful. Only on appreciation of the said facts and satisfied with the bonafide and genuine case of the respondent, the trial Court has rightly allowed the respondent's application to set aside the ex-parte decree passed against him.

6.I heard Mr.P.Valliappan, learned counsel appearing for the petitioner and Mr.R.N.Amarnath, learned counsel appearing for the respondent and perused the entire records.

7.On perusal of the impugned order this Court finds that the respondent to substantiate his claim has marked Ex P1 to P11 denoting his address of residence and communication, which differ from that of the address stated in the plaint by the revision petitioner. Further it is pertinent to note here that the Learned trial Judge after appraisal of the records, evidence of either side and on keen observation that even while the setting up of the respondent as Ex-parte was about to be served on 02.07.2008 to the address stated in the plaint, it was endorsed by the Court staff that the respondent is resident of out station and his date of return is unknown to the nearby resident. Thus the trial Court satisfied over the cause of the

respondent that he was not noticed in the above suit and in view of the fact that the execution petition filed by the respondent is pending on its file has allowed the delay condonation petition and thereby condoned the delay of 250 days in filing the set aside petition.

8. In this context this Court would like to emphasize the following decisions of this Court reported in

i) 2007(4) TLNJ 565 (Civil) in the matter of Ramakrishnan Vs. The AEEO, Tiruvarur & Ors wherein it was held that " The term every day's delay should be explained, should not be viewed in pedantic way and the approach of the Court must be in common pragmatic manner

ii) 2000-1 L.W.547, In the matter of Amudha Vs. S.A.Arumugham & Ors, wherein it was held that condonation of delay is a matter of discretion of the Court and section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within certain time. The Court has to take into consideration that interests of justice require that the delay must be condoned.

9. In the above circumstance that the Learned trial Judge has

allowed the respondent's application holding that the section 5 application is required to be dealt in a pragmatic way, whereas not in a pedantic way, further it is not the period but only the reasons behind such delay is to be looked into.

10.It is needless to say that the above legal proposition relied by the Trial Court is correct and the Courts have their own discretion in this regard.

11.At the same time the Trial Court has rightly imposed a cost to be paid to the revision petitioner as compensation for the delay caused by the respondent. In this regard it is useful to refer the following Judgments of our High Court in 2014 (2) CTC 649 in Nagarathinammal and others -Vs- Madhammal wherein it is held that

“Through the other averments that the petitioners were misled by the assurance made by the Respondent / Plaintiff to withdraw the case and that the 4<sup>th</sup> Revision Petitioner had gone to outstations for the treatment of his ailing mother could be construed to be averments not substantiated and insufficient for condoning the delay, the other reason, namely the suspension of the Advocate by

the Bar Council of Tamil Nadu, which was not known to the Revision Petitioners previously, can be held to be a valid reason for seeking an order condoning delay in filing the Application to set aside the ex-parte Preliminary Decree. This Court is of the considered view that, when such is the contention of the Revision petitioner and such is the reason assigned by them, the interest of Justice requires passing of an Order giving the Revision Petitioners one more opportunity to contest the case and get a contested verdict and at the same time, direct the Revision Petitioners to compensate the Respondent/ Plaintiff by a cost of Rs.10,000/- ”.

12.In 2016 (5) CTC 117 in Sarasu -Vs- Ravi wherein it is held that:

“When a Court of Law deals with an Application to condone the delay filed under Section 5 of the Limitation Act, such Application will have to be generally viewed in a liberal and lenient way to do substantial justice between the parties. By projecting an Application to condone the delay as per Section 5 of the Limitation Act, belatedly, no

party will file the same with a mala fide intention. If a party files a Delay Condonation Application belatedly, he or she runs a serious risk.

However, if an Application filed under Section 5 of the Limitation Act is allowed by this Court, to advance the cause of substantial justice, then the maximum that can happen is that a party will be allowed to partake in the main arena of legal proceedings and the main cause can be decided on merits. Per contra, if a meritorious matter is thrown out at the threshold or at early stage the cause of justice will be certainly defeated. In a Condonation of Delay Application filed under Section 5 of the limitation Act, 1963, the length and breadth of the delay is not a material/ relevant factor".

13. In view of the above dictum laid down by this Court and for the foregoing factual reasons behind the delay on the part of the respondent, this Court finds no material irregularity in the order made by the Trial Court and the same does not call for any interference at all by this Court, except to increase the cost from Rs.1,000/- to Rs.3,000/-. In view of the above discussion, I do not find any merit in

this civil revision petition and the same is deserves dismissal, accordingly dismissed.

14.In the result:

(a) this Civil Revision Petition is dismissed, by confirming the order passed in I.A.No.886 of 2009 in O.S.No.165 of 2008, dated 12.11.2011, on the file of the District Munsif Court, Gobichettipalayam, on condition that the respondent / defendant has to pay a sum of Rs.3,000/- by deducting the cost of Rs.1,000/- has already ordered by the learned District Munsif Court, Gobichettipalayam to the respondent herein within a period of two weeks from the date of receipt of a copy of this order;

(b) the trial Court namely the District Munsif Court, Gobichettipalayam, is hereby directed to number the set aside application and pass orders within a period of 15 days from the date of payment of cost ordered by this Court, by giving notice to both the parties;

(c) on passing orders in the set aside applications, the trial Court is directed to take up the suit in O.S.No.165 of 2008 on day to day basis without giving any

adjournments to either parties and dispose the same within a period of two months. Both the parties are hereby directed to co-operate for early disposal of the suit. Consequently, connected miscellaneous petition is closed.

**21.12.2016**

Note: Issue order copy on 15.11.2017

vs

Index: Yes

Internet: Yes

To

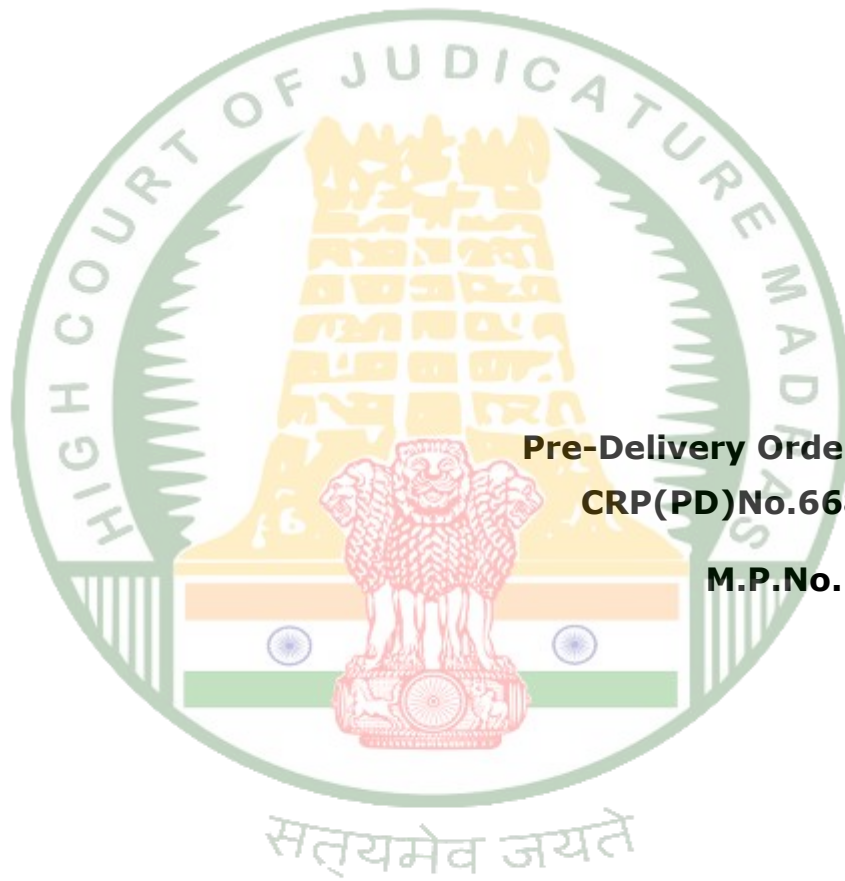
The District Munsif Court,  
Gobichettipalayam.



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**M.V.MURALIDARAN,J.**

VS



**Pre-Delivery Order made in  
CRP(PD)No.668 of 2012  
and  
M.P.No.1 of 2012**

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