

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

**DATED : 19.01.2017**

**CORAM :**

**THE HONOURABLE MS.JUSTICE R.MALA**

**C.R.P(NPD).No.1787 of 2014**  
**and M.P.No.1 of 2014**

K.Desingu

.. Petitioner

Vs.

1.S.Mathiyazhagan  
2.S.Susila

.. Respondents

**Prayer:-** Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 14.02.2014 made in I.A.No.281 of 2013 in O.S.No.14 of 2012 on the file of the II Additional Sub-Court, Cuddalore.

For Petitioner : Ms.N.Nathami

**ORDER**

This civil revision is filed against the fair and decreetal order dated 14.02.2014 made in I.A.No.281 of 2013 in O.S.No.14 of 2012 on the file of the II Additional Sub-Court, Cuddalore.

2.The petitioner as a plaintiff filed a suit in O.S.No.14 of 2012 for specific performance. The defendants/respondents herein were set exparte on 03.09.2012 and an exparte decree was passed on 28.11.2012. The petitioner filed the execution petition to execute the sale deed and thereafter, the respondents filed I.A.No.281 of 2013 for setting aside the exparte decree along with condonation of delay of 339 days. The trial Court, after hearing both sides, allowed the application. Challenging the same, the petitioner/plaintiff has preferred this revision.

3.Learned counsel for the petitioner would submit that the respondents after receipt of notice in the execution petition, have filed a vakalat, but they have not filed the application to set aside the exparte decree in time. Further, they have not assigned sufficient reason for condonation of delay. That factum was not considered by the trial Court and it has erroneously passed the order to condone the delay. Therefore, she prays for setting aside the fair and decreetal order passed by the trial Court. To substantiate her arguments, she relied upon the following decisions:

- (i) 2014(2) CTC 415 (P.Sithivinayagam v. G.Bhoopalan);
- (ii) CRP(NPD)No.4548 of 2015, dated 18.01.2016 (T.N.Natesan v. K.Appavoo);

4. Even though the respondents were served, no representation on behalf of them. Hence, the matter was posted today under the caption 'for orders'. Even today, there is no representation on behalf of the respondents.

5. Heard the learned counsel for the petitioner and perused the typed set of papers.

6. The petitioner as a plaintiff filed a suit for specific performance on the basis of sale agreement dated 23.11.2010. The first respondent is the wife of one Shanmugam and second respondent is her son. They were set exparte on 03.09.2012 and exparte decree was passed on 28.11.2012. Then the petitioner filed the execution petition and after receipt of notice in the execution petition, the respondents/defendants filed I.A.No.281 of 2013 under Section 5 of the Limitation Act to condone the delay of 339 days in filing the petition to set aside the exparte decree. In the

affidavit, the first respondent stated that he was suffering from jaundice and was bed ridden and was taking country treatment. So he could not meet the counsel to give instructions to file the application for setting aside the exparte decree. Hence, he prays for condonation of delay. That factum was considered by the trial Court in para-3 of its order. To substantiate the averment made in the affidavit, the first respondent has himself examined as R.W.1 and he has been subjected to cross-examination.

7. At this juncture, it is appropriate to consider the decision of this Court relied upon by the learned counsel for the petitioner reported in **2014(2) CTC 415 (P.Sithivinayagam v. G.Bhoopalan)**, wherein it is held that in the suit for specific performance, an exparte decree was passed. The defendant sought to set aside the exparte decree with a delay of 1486 days. The trial Court condoned the delay. However, the High Court reversed the said order in revision. In the case on hand, since the first respondent was suffering from jaundice and was bed ridden, as soon as he received notice in the execution petition and filed vakalat, he has filed an application to set aside the exparte decree along with the petition to condone the delay of 339 days. So the

above decision is not applicable to the facts of the present case.

8.As per the dictum of the Apex Court reported in **AIR 1998 SC 3222 (N.Balakrishnan v. M.Krishnamurthy)**, it was specifically held that if the length of delay is immaterial, sufficient cause for condonation of delay has to be explained. It is appropriate to extract para-9 to 11, which read as follows:

"9. .. .. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the Court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first Court refuses to condone the delay. In such cases, the superior Court would be free to consider the cause shown for the delay afresh and it is open to such superior Court to come to its own finding even

untrammelled by the conclusion of the lower Court.

10. The reason for such a different stance is thus: The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. Time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. . . . "

In the above decision, it is specifically held that once the Court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior Court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse.

9. Under the aforesaid circumstances, this Court has to decide whether the fair and decretal order passed by the trial Court is

perverse or lack of materials? On perusal of the fair and decreetal order passed by the trial Court, it reveals that it has considered the evidence of R.W.1, who has stated that there can be no document for country treatment. Further, it is to be noted that the suit is for specific performance and the valuable property rights of the defendants have also been involved. So an opportunity must be given to the defendants to put forth their defence. In such circumstances, the fair and decreetal order passed by the trial Court does not suffer any perversity. Therefore, applying the dictum laid down in Balakrishnan case, I am of the view that there is no reason for interfering with the finds of the trial Court and that the fair and decreetal order passed by the trial Court is hereby confirmed. Consequently, the Civil Revision Petition is dismissed.

10.In the result, the Civil Revision Petition stands dismissed.  
No costs. Consequently, connected Miscellaneous Petition is closed.

**19.01.2017**

kj

To

II Additional Sub-Court, Cuddalore.

**R.MALA,J.**

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**<http://www.judis.nic.in>**