



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.650 of 2019

and

C.M.P. (MD)No.3459 of 2019

WEB COPY

Subash : Petitioner/1<sup>st</sup> Respondent/Plaintiff  
.. Vs ..  
1.Santhanakumari  
2.Kumari : Respondents 1&2/Petitioners/Defendants  
5 and 6  
3.David Immanuel  
4.Rajeshwari : Respondents 3&4/Respondents 2&3/  
Defendants 3&4

PRAYER: Civil Revision Petition is filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 26.11.2018 passed in I.A.No.93 of 2018 in O.S.No.262 of 2012 on the file of District Munsif-cum-Judicial Magistrate Court, Boothapandy.

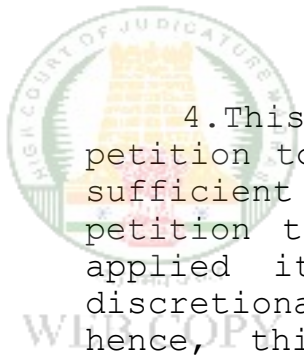
For Petitioner : Mr.M.P.Senthil

**ORDER**

This Civil Revision Petition is directed against the order passed by the learned District Munsif-cum-Judicial Magistrate, Boothapandy, in I.A.No.93 of 2018 in O.S.No.262 of 2012, dated 26.11.2018.

2.The petitioner is the plaintiff in the suit in O.S.No.262 of 2012 on the file of the District Munsif-cum-Judicial Magistrate Court, Boothapandy. The said suit is filed for specific performance of an agreement of sale in respect of the suit property and for other consequential relief. During the pendency of the suit, the revision petitioner has also obtained an order of interim injunction restraining the respondents/defendants from interfering with the peaceful possession and enjoyment of the suit property. The said suit was decreed by judgment and decree, dated 10.08.2017 and that the respondents filed a petition to set aside the *ex parte* decree with the delay of 186 days. The respondents have given sufficient reasons for the delay of 186 days in filing a petition to set aside the *ex parte* decree. The said petition was allowed by the lower Court on condition that the respondents pay a sum of Rs.500/- to the Taluk Legal Aid Service. Aggrieved by the same, the plaintiff has preferred the above revision petition.

3.The learned Counsel for the petitioner submitted that the respondents have not given sufficient reasons for the delay and that the reasons stated in the affidavit are false.



4.This Court gone through the affidavit filed in support of the petition to condone delay and finds that the respondents have given sufficient reasons for condoning the delay of 186 days in filing a petition to set aside the *ex parte* decree. The lower Court has applied its mind and the order is proper by exercising its discretionary power in favour of the respondents/defendants and hence, this Court is not inclined to entertain this revision petition, which is otherwise devoid of merits. In this case, the suit is for specific performance of agreement of sale and that the delay in filing a petition to set aside the *ex part* decree is not alarming. This Court, in such circumstances, is justified in taking a decision to protect the rights of parties, by giving them a fair opportunity to contest the suit on merits.

5.Accordingly, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Boothapandy, in I.A.No.93 of 2018 in O.S.No.262 of 2012, dated 26.11.2018, is confirmed.

6.The learned Counsel for the revision petitioner submitted that the lower Court may be directed to dispose of the said suit within a time frame fixed by this Court. Hence, the learned District Munsif-cum-Judicial Magistrate, Boothapandy, is directed to dispose of the suit in O.S.No.262 of 2012 within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

1.The District Munsif-cum-Judicial Magistrate, Boothapandy.

2.The Section Officer-2 copies

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.M.P. SENTHIL, Advocate ( SR-14831[F] dated 25/08/2020 )

C.R.P. (PD) (MD) No.650 of 2019

24.08.2020

KM (04.09.2020) 2P 5C