



C.R.P. No. 1742 of 2014

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

DATED : 08.11.2022

CORAM

**THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI**

C.R.P.No. 1742 of 2014

M.Narayanappa  
S/o. Mudhappa

... Petitioner

Versus

M.Krishna Reddy (died)

1. K.Ganesh,  
S/o. M.Krishna Reddy
2. Gopinath,  
S/o. M. Krishna Reddy
3. Sujatha,  
W/o. Rajanna
4. Nirmala,  
W/o. Seenappa
5. K.Narayanan,  
S/o. Kempaiah
6. B.S.Ramya,  
W/o. B.S. Sathya Chandran



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7. A.S.Aravindh,  
S/o. A.M.Subramaniam

8. G.Arun Kumar,  
S/o. Ganesan

9. Minor Lavanya,  
D/o. Ganesan  
minor is rep. by her father Ganesan,  
the 2<sup>nd</sup> respondent as natural guardian

10. Nanjappa,  
S/o. Late Venkatappa

11. Sekappa,  
S/o. Late Venkatappa

12. Maiappa,  
S/o. Late Venkatappa

13. Narayanappa,  
S/o. Late Venkatappa

14. Lakkappa  
S/o. Late Venkatappa

15. Smt. Parvathamma,  
W/o. T. Ramachandran

... Respondents

**PRAYER :** Civil Revision Petition filed under Sec.115 of Civil Procedure Code, praying to set aside the fair and decreetal order passed in I.A.No.789 of 2013 in O.S.No.516 of 2004 dated 07.03.2014 on the file of District Munsif cum Judicial Magistrate Court No.1, Hosur.



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For Petitioner : Mr.R.Jayaprakash

For Respondents : R1 – died  
R2, R3, R5, R8, R10 to R14  
- No appearance

R8 – refused  
R4 – Tapal refused

Mr.V.Nicholas for R6 & R7

R9 – Minor rep. by R1

### **ORDER**

Challenging the impugned order passed in I.A.No. 789 of 2013 in O.S.No.516 of 2004 by the learned District Munsif cum Judicial Magistrate Court No.1, Hosur, the plaintiff filed this Civil Revision Petition.

2. The plaintiff filed the suit for declaration and injunction against the defendants 1 to 15 in O.S.No. 516 of 2004 on the file of District Munsif Court, Hosur. Summons were served and written statement was also filed by contesting defendants. Thereafter, the suit was posted for trial and P.W.1 was examined. At the same time, the plaintiff filed an application in



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I.A.No.76 of 2012 to withdraw the suit, which was not permitted by the trial court, against which, he preferred a Civil Revision Petition. During the pendency of C.R.P., he was not able to follow the proceedings before the trial court. Hence, the suit was dismissed for default on 01.10.2012. Immediately, on coming to know about the fact, he took steps to restore the suit, but there is a delay of 18 days and to condone the delay, he filed an application in I.A.No. 789 of 2013 under Sec.5 of Limitation Act. The said application was strongly objected by the defendants stating that inspite of several opportunities given to the plaintiff, he purposely evaded the proceedings. Hence, the alleged delay is not acceptable one and on considering both side submissions, the trial court dismissed the application stating that inspite of direction given by this Court to dispose the suit within three months, the plaintiff not cooperated with the proceedings. Challenging the said findings, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner argued that due to the pendency of C.R.P., the plaintiff was not able to follow the trial court proceedings. Hence, the delay is neither willful nor wanton, but the trial



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court ought to have appreciated the fact, however erroneously dismissed the application. Furthermore, the petitioner is having valid defence in his case and hence, he may be given opportunity to defend his case and prayed to set aside the findings of trial court.

4. By way of reply, the learned counsel for respondents 6 and 7 submitted that only to drag on the proceedings, the plaintiff filed the said application. Hence, he prayed to dismiss this Civil Revision Petition.

5. Heard and considered rival submissions made by learned counsel for petitioner as well as respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it seems that within 18 days from the dismissal of suit, the plaintiff approached the court to restore the same. It is an admitted fact that the defendants also approached this Court. The delay is neither willful nor wanton, but the trial court failed to appreciate the fact. Accordingly, this Civil Revision Petition is allowed and the order passed by the trial court in



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I.A.No.789 of 2013 is set aside and the suit is ordered to be restored.

However, the trial court is directed to dispose the suit on merits by giving opportunity to both parties within a period of six months from the date of receipt of copy of this order. No costs.

**08.11.2022**

Index : Yes/No  
Internet: Yes/No  
Speaking/Non Speaking order  
rpp

To

District Munsif cum Judicial Magistrate No.1,  
Hosur.



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**T.V.THAMILSELVI, J.**

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