



CRP(PD)(MD)No.1925 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

CRP(PD)(MD)No.1925 of 2022 and  
CMP(MD) No.10850 of 2022

1.Shanmugam  
2.Natarajan  
3.V.Alagarsamy  
4.L.Chellaponnu

... Petitioners

Vs

1.Kanthasamy  
2.S.Karnan

... Respondents

**Prayer:** Petition filed under Section 115 of Civil Procedure Code, to set aside the order dated 08.08.2022 in I.A.No.294 of 2021 in O.S.No. 104 of 2016 passed by the learned District Munsif cum Judicial Magistrate, Peraiyur.

For Petitioner : Mr.P.Ganapathi Subramanian

### **ORDER**

This Civil Revision Petition is filed challenging the order passed by the learned District Munsif cum Judicial Magistrate, Peraiyur



CRP(PD)(MD)No.1925 of 2022

in I.A.No.294 of 2021 in O.S.No.104 of 2016, dated 08.08.2022.

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2.The petitioners are the defendants 1 to 4 in O.S.No.104 of 2016, which is pending on the file of the District Munsif cum Judicial Magistrate Court, Peraiyur. The respondents/plaintiffs 1 & 2 have filed the above suit for the relief of declaration, to declare certain settlement deeds as null and void. When the suit was posted for cross examination, due to non-appearance of the respondents/plaintiffs, the suit was dismissed for default. The respondents/plaintiffs filed an application to restore the suit with a delay of 1227 days and the same was allowed by the trial Court with a cost of Rs.2,000/-. Aggrieved over the same, the defendants have preferred this Civil Revision Petition.

3.The learned counsel appearing for the petitioners/defendants submits that the petitioners/defendants are aged



CRP(PD)(MD)No.1925 of 2022

about 70 years and the properties originally belong to them. However, the respondents/plaintiffs filed the suit in order to harass them. The learned counsel further submits that the respondents/plaintiffs have not proceeded with the trial. When the suit was listed for trial 24.07.2017, they did not appear and therefore, the suit was dismissed for default. Thereafter, it was restored to file on their application in IA.No.585 of 2017 on 15.11.2017. Thereafter, when the suit was posted for cross examination of PW 1, again the plaintiffs remained absent and therefore, the suit was dismissed for default on 11.12.2017. To restore the suit, the petitioners/plaintiffs filed an application with a delay of 1227 days. The respondents/plaintiffs have not offered any explanation for such an inordinate delay of 1227 days. However, the trial Court has allowed the application with a cost of Rs.2000/-.The order passed by the trial Court is against the dictum laid down by the Honourable Supreme Court. The respondents/plaintiffs have to explain each and every day delay with proper reasons and they have not offered any



CRP(PD)(MD)No.1925 of 2022

valid/acceptable reasons for such a long delay. Hence, the order of the trial Court is liable to be set aside.

4.The learned counsel appearing for the respondents/plaintiffs submits that the plaintiffs are illiterates and also doing some services in the temple. They were not properly advised to follow up with the case. However, they are having a good case on merits in the suit and therefore, considering the available material in favour of the respondents/plaintiff, the trial Court has also granted the relief and condoned the delay of 1227 days. It is the discretion of the Court which passes the order and hence there is no reasons to interfere with the order. The learned counsel further submits that the respondents/plaintiffs are ready to co-operate for the early disposal of the suit.



CRP(PD)(MD)No.1925 of 2022

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The respondents/plaintiffs filed a suit in O.S.No.104 of 2016, before the District Munsif cum Judicial Magistrate Court, Peraiyur. The suit was dismissed for default due to their non-appearance. To restore the suit, the plaintiffs filed an application with a delay of 1227 days. The trial Court satisfied with the reasons stated by the plaintiffs allowed the application with a cost of Rs.2000/-. The grievance of the petitioners is that the petitioners are age old people and the suit itself has been filed to harass them.

7.Considering the length of the delay, this Court is not inclined to entertain this Civil Revision Petition. However, discretion has been exercised by the trial Court for providing an opportunity to the plaintiffs. Hence, this Court is not inclined to disturb the order



CRP(PD)(MD)No.1925 of 2022

passed by the trial Court. However, this Court enhances the cost amount as Rs.25,000/-, which has to be paid by the respondents/plaintiffs to the petitioners/ defendants within a period of four weeks from the date of receipt of a copy of this order, failing which, the relief granted by this Court will stand automatically cancelled. The trial Court shall also proceed with the trial and conclude the same within a period of four months from the date of receipt of a copy of this order. The parties shall co-operate for early disposal of the trial.

8.Accordingly, this Civil Revision Petition is disposed of.

No costs. Consequently, connected Miscellaneous Petition is closed.

**25.11.2022**

Index : Yes / No.

Internet : Yes / No.

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To

The learned District Munsif cum Judicial Magistrate, Peraiyur.

6/7



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CRP(PD)(MD)No.1925 of 2022

**B.PUGALENDHI, J.**

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**Order made in**  
**CRP(PD)(MD)No.1925 of 2022 and**  
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**25.11.2022**