



C.R.P.No.3976 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **26.09.2023**

CORAM

**THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN**

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1.The Superintend of Engineer,  
Kaspa Cuddalore,  
Tamil Nadu Electricity Board,  
Cuddalore.

2.The Executive Engineer,  
Puthamur,  
Tamil Nadu Electricity Board,  
Kaspa Cuddalore,  
Virudhachalam Taluk, Cuddalore.

3.Assistant Engineer,  
Tamil Nadu Electricity Board,  
Pennadam, Tirrakudi Taluk,  
Virudhachalam Taluk.

... Petitioners

Vs

1.Ulagamuthalvi

2.Muthuvel

... Respondents

**PRAYER:-**Civil Revision Petition filed under Section 115 of the Code of Civil Procedure to under Article 227 of the Constitution of India against fair and decreetal order dated 10.08.2018 passed in I.A.No.91 of 2017 in

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O.S.No.38 of 2008 on the file of the learned I-Additional District Munsif Court at Virdhachalam.

For Petitioners : Ms.G.S.Dhanalakshmi  
for Mr.S.T.Raja

For Respondents : Ms.Jayasudha Suryanarayanan

### **ORDER**

This Civil Revision Petition has been filed against the order passed in I.A.No.91 of 2017 in O.S.No.38 of 2008 on the file of the I-Additional District and Munsif Court, Virdhachalam.

2. I.A.No.91 of 2017 was an application filed to condone the delay of 395 days in setting aside the *ex-parte* decree dated 23.06.2014. O.S.No.38 of 2008 was filed for declaration that the notice issued to the plaintiffs is null and void and for consequential relief of injunction.

3. In the suit, the defendants were served and they have also entered appearance through a counsel. They filed a written statement. They were set *ex-parte* on 29.03.2011 after the matter was adjourned on several

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dates giving several opportunities to the defendants to cross-examine the plaintiffs. As P.W.1 was not cross-examined, an *ex-parte* decree was passed on 23.06.2014. Thereafter, the plaintiffs filed an Execution Petition and it is only at that stage, after a lapse of one and a half years, an application was filed on 19.11.2015 to condone the delay and set aside the *ex-parte* decree. The said application was dismissed against which the present Revision has been filed.

4. Heard Ms.G.S.Dhanalakshmi, for Mr.S.T.Raja, learned counsel for the petitioners and Ms.Jayasudha Suryanarayanan, learned counsel for the respondents and perused the materials available on record before this Court.

5. A perusal of records show that the Department had in fact engaged a lawyer to contest the suit. However, instead of contesting the suit, the suit was left *ex-parte* as early as on 2011. The plaintiff was diligently prosecuting the case and the matter was posted for cross-

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examination on 23.06.2014. Though, the Court granted three(3) years time, no steps were taken by the Civil Revision Petitioners to place their side of the case before the Court below.

6. The reason for which the case ended in an *ex-parte* decree was that the learned Government Advocate did not cross-examine the plaintiffs. The mistake committed by the counsel should not be placed on the doors of the party. However, I have to take into consideration the loss, that has occurred to the respondents 1 and 2 on account of the matter which is being pending from 2008 till date.

7. Taking into consideration the above facts, I am inclined to condone the delay of 395 days with the following conditions:-

(i) The petitioners shall **PAY** the respondents a sum of Rs.10,000/- as cost on or before 31.10.2023. On payment of such cost, the order dated 10.08.2018 will be set aside and the delay will stand condoned.

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(ii) The learned I-Additional District Munsif, Virudhachalam, is thereafter, requested to take up the application for setting aside the *ex-parte* decree and set aside the same on payment of cost of Rs.5,000/- for setting aside the same.

(iii) In case the cost is not paid in I.A.No.91 of 2017 or as directed by this Court for condonation of delay or for setting aside the *ex-parte* decree, the application will stand dismissed without any further notice to the Court.

8. With the above directions, this Civil Revision Petition is allowed. No costs.

**26.09.2023**

gba

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Speaking order: Yes/ No

Neutral Citations: Yes/ No

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**V. LAKSHMINARAYANAN,J.**

Gba

To

The Additional District Munsif Court -I,  
Virdhachalam.

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