



C.R.P(MD)No.1522 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Dated : 26.04.2023**

CORAM:

**THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

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Azhagesan (Died)

2.Sheela Rose

... Petitioners

*(Second petitioner is brought on record as legal heir of the deceased sole petitioner vide Court order dated 05.08.2022 made in C.M.P(MD)Nos.4232 to 4234 of 2021 in C.R.P(NPD)(MD)No.1522 of 2012)*

Vs.

G.Christu (Died)

2.Shylaja

3.C.S.Sowmiya Mol

4.C.S.Ramya Mol

5.C.S.Divya Mol

... Respondents

*(Respondents 2 to 5 are brought on record as legal heirs of the deceased sole respondent vide Court order dated 01.03.2023 made in C.M.P(MD)Nos.6589 and 6591 of 2022 in C.R.P(MD)No.1522 of 2012)*

**PRAYER :** Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 12.07.2012

1/11



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made in I.A.No.385 of 2009 in O.S.No.651 of 2004 on the file of the  
Principal District Munsif Court, Nagercoil.

For Petitioner : Mr.K.R.Manimaran  
for Mr.AR.Jeya Rhuthran

For R-1, R-2  
to R-4 : Died  
For R-5 : Dispensed with

### **ORDER**

This Civil Revision Petition has been filed by the petitioner assailing the order passed by the Principal District Munsif Court, Nagercoil in I.A.No.385 of 2009 in O.S.No.651 of 2004 on 12.07.2012. The petitioner is a senior citizen aged about 69 years and he died during the pendency of this Civil Revision Petition. His legal heir was impleaded as the second petitioner herein. The suit in O.S.No.651 of 2004 was one for specific performance of contract seeking to direct the defendant to execute the sale deed in favour of the plaintiff. The petitioner / defendant in I.A.No.385 of 2009 is the revision petitioner. The suit in O.S.No.651 of 2004 was decreed as prayed for by setting aside the defendant, who is the revision petitioner / petitioner / defendant was set *ex parte*. An execution petition in E.P.No.39 of 2005 in O.S.No.651 of 2004 was also preferred before the Trial Court.



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For the sake of convenience, the parties herein are arrayed as in the I.A.No. 385 of 2009 in O.S.No.651 of 2004.

2. The petitioner / defendant herein was set *ex parte* by the Trial Court in the original suit on 17.11.2004. After a delay of 1552 days, the revision petitioner filed an interlocutory application in I.A.No.385 of 2009 in O.S.No.651 of 2004 before the Principal District Munsif Court, Nagercoil under Section 5 of the Indian Limitation Act and Section 151 of the Code of Civil Procedure, 1908, seeking to condone the delay of 1552 days in condoning the delay to set aside the *ex parte* decree dated 17.11.2004. However, counter was also filed before the Trial Court by the respondent to the said interlocutory application and after hearing both the parties, the Trial Court was pleased to dismiss the said interlocutory application on 12.07.2012, without accepting the reasons put-forth by the revision petitioner herein.

3. It is seen from the cause list that the sole respondent also died and the petitioner has taken diligent steps to implead the legal heirs of the respondent as R2 to R5. Notice has been served on the respondents 2, 3 and



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4 and their names are also printed in the cause list. Notice is also served on the fifth respondent and the track consignment report is also filed. However, the learned Counsel for the petitioner dispensed this Civil Revision Petition as against the fifth respondent and the same is effected.

4. Heard the learned Counsel for the revision petitioner anxiously and perused the materials available on record. The learned Counsel for the revision petitioner took me through the various grounds of the Civil Revision Petition and the contents of the documents.

5. The learned Counsel for the petitioner submitted that the delay of 1552 days was neither wanton nor wilful, though the revision petitioner was aware of the suit in O.S.No.651 of 2004. On 22.07.2004, when the suit summons was served on him, he engaged an Advocate to file a vakalath on his behalf and accordingly vakalath was filed. Thereafter, the original suit stood posted for filing of written statement on 02.09.2004 and 15.10.2004. Though the revision petitioner had arranged to file a written statement eventually due to the inadvertence of the Counsel on record, written statement was not filed and the suit was set *ex parte* on 17.11.2004. By that



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time, the revision petitioner was extremely ill due to the demise of his wife.

As a result of which, he was not able to meet his Advocate, give necessary instructions and also to know about the stage of the case.

6. However, the factum that the suit was set *ex parte* was not at all conveyed to the revision petitioner by the Trial Court lawyer. In the meanwhile, it is learnt that the respondent / plaintiff by the strength of the *ex parte* decree in his favour had filed an execution petition in E.P.No.39 of 2005 for execution of sale deed. At this stage, the revision petitioner had taken diligent steps to set aside the *ex parte* decree, which was passed as against him with a new Counsel. However, the newly appointed Counsel instead of taking steps to set aside the *ex parte* decree, had filed a vakalath in the execution petition in E.P.No.53 of 2005. The revision petitioner was in the impression that the Advocate would have taken diligent steps to set aside the *ex parte* decree. But by the end of the entire scenario, the revision petitioner came to know that the execution petition has ended in favour of the respondent / plaintiff and sale deed was also preferred in favour of the respondent / plaintiff on 07.08.2006 and got executed through Court on 19.01.2007.



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7. The Hon'ble Division Bench of this Court reported in ***MANU/TN/2141/2022 (M/s.Ess Gee International, Represented by its Manager, Mr.S.Prasad Vs. The State of Tamil Nadu)*** dated 10.03.2022, the relevant portion of which is extracted as follows:

*10. In Esha Bhattacharjee v. Raghunathpur Nafar Academy [MANU/SC/0932/2013 : 2013 (12) SCC 649], the Hon'ble Supreme Court has culled out the principles applicable to an application for condonation of delay and the same are reproduced hereunder:*

*"i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*

*ii) The terms "sufficient cause" should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.*

*iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

*iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.*

*v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant*



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*fact.*

*vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.*

*vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.*

*viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.*

*ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.*

*x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.*

*xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.*

*xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.*

*xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude."*



8. In another case of this Court reported in **2017 (3) CTC page 445** (**S.Nirmaladevi Vs. T.R.Rangasamy**), dated **06.03.2017**, where a delay of with 1202 days was condoned. Paragraph Nos.11 and 12 is extracted as follows:

*“11. No doubt, the delay of 1,202 days is huge, but in the matter of condoning the delay, there is shift in the approach of the Court. It may be a shifting jurisprudence. The attitude of the Judges differ in tune with the change in time. It must have change. If it is not, it will bar the growth of law. That is how there is march of law.*

*12. Earlier, the attitude of the Courts in delay condonation petitions is to view it with tinged glasses. Now it has become obsolete. Now the attitude of the Court is that really there is a case for adjudication, the Court consider it a sufficient cause or reason to give an opportunity and condone the delay. Otherwise, they throw away such petitions. Thus, now the test is not the length of delay, but it is substance of the matter. However, using this benevolent attitude of the Court, a Court bird or a seasoned litigant shall not be allowed to enter the Court to practice some legal acrobatic at the cost of the public time and public money. In such view of the matter, even in these kind of petitions, the Court can gauge the bona fides of the petitioner. These are all distilled from the current trend of the case-laws on the point.”*



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9. All through the proceedings, the revision petitioner, who was a senior citizen, was suffering continuously from illness due to the demise of his wife and he was not able to follow the course of the pending suits because of his grief and illness with his Advocate. A litigant should not be punished for the inadvertence of the lawyer and that too a senior citizen. The Courts should take a liberal view in dealing with petitions to condone the delay to set aside the *ex parte* decree and on that basis being convinced with the reasons put-forth for the delay of 1552 days in setting aside the *ex parte* decree, this Court has taken a liberal view that the Trial Court ought not to have dismissed the petition to condone the delay in I.A.No.385 of 2009 in O.S.No.651 of 2004.

10. In fine, this Court is inclined to set aside the order passed by the learned Principal District Munsif Court, Nagercoil in I.A.No.385 of 2009 in O.S.No.651 of 2004 dated 12.07.2012. In the result, this Civil Revision Petition stands allowed. There shall be no order as to costs.

**26.04.2023**



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NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
BTR

To

- 1.The Principal District Munsif Court,  
Nagercoil.
- 2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**L.VICTORIA GOWRI, J.**

BTR

Order made in  
**C.R.P(MD)No.1522 of 2012**

**26.04.2023**