



**C.R.P(MD) No.69 of 2022 &
C.M.A(MD)No.1277 of 2023**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P(MD)No.69 of 2022

and

C.M.A(MD)No.1277 of 2023

and

C.M.P.(MD) Nos.340 of 2022 and 17114 of 2023

C.R.P(MD) No.69 of 2022

1.M.Kaleeswari

2.S.Madasamy

... Petitioners

.vs.

K.Sakthivel

... Respondent

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order and decreetal order in I.A.No.1 of 2021 in O.S.No.32 of 2018, dated 01.10.2021, on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and allow this Civil Revision Petition.



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For Petitioners : Mr.P.T.Ramesh Raja

For Respondent : Mr.K.Sudalaiyandi

C.M.A(MD) No.1277 of 2023

1.M.Kaleeswari

2.S.Madasamy ... Appellants

.vs.

K.Sakthivel ... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Order 43 Rule 1 of the Code of Civil Procedure, to set aside the order and decretal order in I.A.No.2 of 2021 in O.S.No.32 of 2018, dated 01.10.2021, on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and allow this Civil Revision Petition.

For Appellants : Mr.P.T.Ramesh Raja

For Respondent : Mr.K.Sudalaiyandi

COMMON ORDER

C.R.P(MD)No.69 of 2022 is filed against the order made in I.A.No.01 of 2021 in O.S.No.32 of 2018 dated 01.10.2021 on the file of



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learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

2. C.M.A(MD)No.1277 of 2023 is filed against the order and decretal order made in I.A.No.2 of 2021 in O.S.No.32 of 2018, dated 01.10.2021, on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

3. The learned counsel for the petitioners/appellants in these matters submitted that the respondent filed a suit in O.S.No.32 of 2018 seeking the relief of recovery of possession. Unfortunately, the appellants/petitioners were set exparte and an exparte decree was passed on 11.04.2019. The appellants received a summon in the Execution Petition on 20.09.2019. Only then, they knew about the exparte decree. When they contacted their advocate, he informed that he was not well and he would make arrangements for setting aside the exparte decree. However, that was not done. Subsequently, their prior advocate Mr.Amuthan died on 02.03.2021 because of his illness. It resulted in a delay of 682 days in filing a petition to set aside the exparte decree.



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The learned trial Court without considering the genuine reasons, dismissed the petitions. Therefore, these revision and appeal are filed.

4. In response, the learned counsel for respondent strongly opposes these revision and appeal on the ground that the reasons stated for the delay in filing a petition to set aside the ex parte decree cannot be accepted. No proper and valid reasons have been given and that was the reason why, the trial Court dismissed the petition for condoning the delay and the petition for setting aside the exparte decree.

5. Considered the rival submission and perused the records.

6. It is the submission of the learned counsel for the petitioners/appellants that the petitioners are the owners of the suit property. They had entered into a sale agreement with the respondent. Essentially the transaction between the parties are in connection with the borrowal of loan. Since the suit for specific performance was not filed by the petitioners, the respondent filed the present suit. The appellants have a fair chance of success, if they are given opportunity to defend the suit.



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Though it is claimed that there is a delay of 682 days, due to the intervention of COVID, the Hon'ble Supreme Court exempted the period from 24.03.2020 to 04.10.2020 for computing the period of limitation. When that is adopted, the delay comes only to 317 days.

7. In the light of the submission of the learned counsel for the parties and the nature of the defence taken by the petitioners in O.S.No. 32 of 2018, this Court is of the view that the petitioners/appellants should be given an opportunity to file written statement in O.S.No.32 of 2018 and contest the case.

8. In this view of the matter, these Civil Revision Petition and Civil Miscellaneous Appeal are allowed on payment of costs of Rs.2,000/-, in each matter to the respondent within a period of three weeks from today, failing which, the revision and the appeal would result in automatic dismissal without any further reference to this Court. Once exparte decree is set aside, the petitioners/appellants are directed to file a written statement within a period of two weeks. The learned trial Judge is directed to frame the issues immediately and dispose of the suit as



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expeditiously as possible, preferably, within a period of six months from the date of filing the written statement. No costs. Consequently, connected miscellaneous petitions are closed.

Index :Yes/No
Internet :Yes/No
NCC :Yes/No
cp

18.12.2023

To

The Principal District and Sessions Judge,
Srivilliputhur,
Virudhunagar District.



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G.CHANDRASEKHARAN,J.

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