



C.R.P(NPD)(MD)No.596 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(NPD)(MD)No.596 of 2018

and

C.M.P(MD)No.2664 of 2018

Mohammed Yousuf

... Petitioner /Petitioner / Defendant

.Vs.

Usha

.. Respondent / Respondent / Plaintiff

**PRAYER:** Civil Revision Petition filed under Section 115 of Cr.P.C., against the fair and decreetal order passed in I.A.No.573 of 2017 in O.S.No.9 of 2016 on the file of the Principal Sub Court, Tirunelveli, Dated 23.11.2017.

For Petitioner : Mr.T.Selvam

For Respondent : Mr.S.B.Kamalanathan

### **ORDER**

The Civil Revision Petition is preferred against the dismissal of the condone dealy application filed by the revision petitioner as a defendant to set aside the *ex parte* decree passed in O.S.No.9 of 2016.



C.R.P(NPD)(MD)No.596 of 2018

WEB COPY

2.The reasons assigned by the revision petitioner in the affidavit in support of the condone delay application are that he was ill and also out of station and therefore, he could not attend the suit.

3.The respondent filed a detailed counter stating that the respondent, subsequent to the *ex parte* decree, initiated execution proceedings and the petitioner appeared in the said execution proceedings and also contested the same. Whiles, after a lapse of five months, the application to set aside the *ex parte* decree came to be filed.

4.The trial Court finding merit in the objections taken by the respondent, dismissed the application for condonation of delay. The revision is directed against the said order on the ground that the trial Court ought to have afforded an opportunity to the revision petitioner and failed to see that there was no dilatory tactics on the part of the revision petitioner who had promptly filed written statement and therefore, the order of the trial Court is sought to be set aside.

5.I heard the learned counsel for the revision petitioner and the



respondent.

WEB COPY

6.The suit is one for recovery of alleged advance paid by the plaintiff as a defendant to the landlord, the revision petitioner herein. The defendant has filed written statement denying the receipt of the alleged advance amount. However, subsequently, he has not appeared to contest the suit and the same resulted in the *ex parte* decree being passed.

7.Be that as it may, the learned counsel for the revision petitioner states that, to show his *bona fides*, the petitioner is willing to deposit 50% of the suit claim.

8.In view of the said submission of the learned counsel for the petitioner, I am of the view that an opportunity can be afforded to the petitioner/defendant to contest the suit on merits subject to the petitioner depositing a sum of Rs.1,00,000/- (Rupees One Lakh only) to the credit of O.S.No.9 of 2016 on the file of the Principal Sub Court, Tirunelveli, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the Principal Sub Court, Tirunelveli, shall take up the trial of the suit and dispose of the suit within a period of six months



C.R.P(NPD)(MD)No.596 of 2018

thereafter.

WEB COPY

9. With the above directions, the Civil Revision Petition is allowed.

There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No  
Internet: Yes/No  
NCC: Yes/No  
SJI

**05.12.2023**

To

1. The Principal Sub Court, Tirunelveli.
2. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



C.R.P(NPD)(MD)No.596 of 2018

**P.B.BALAJI,J.**

SJI

**C.R.P(NPD)(MD)No.596 of 2018**

**05.12.2023**