



C.R.P.(MD).No.2740 of 2018

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 21.09.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

C.R.P(NPD)(MD)No.2740 of 2018

Muniyamuthu ... Petitioner/Petitioner/Defendant

-vs-

Kunju ... Respondent/Respondent/Plaintiff

**PRAYER:** Civil Revision Petition is filed under Section 115 of C.P.C, against the order and decreetal order dated 03.10.2018 passed in I.A.No.967 of 2015 in O.S.No.111 of 2010 on the file of the Principal District Munsif at Kumbakonam.

For Petitioner : Mr.M.Pandian

For Respondent : Mr.B.Anandan

### **ORDER**

The present Civil Revision Petition has been filed by the petitioner under Section 115 of C.P.C, against the order and decreetal order dated 03.10.2018 passed in I.A.No.967 of 2015 in O.S.No.111 of 2010 on the file of the Principal District Munsif at Kumbakonam.



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2. The petitioner herein is the Defendant and the respondent herein is the plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The brief facts which give rise to the present Civil Revision Petition are that the plaintiff has filed the suit for the relief of permanent injunction. It appears that the defendant, after receipt of summons, has not appeared before the Court below. As a result of which, an *ex parte* decree was passed on 11.06.2010. When the defendant has moved an application to set aside the *ex parte* decree, there was a delay of 1952 days. Hence, the defendant has filed an application to condone the delay of 1952 days, on the ground that after receipt of the summons, there was a negotiation, and that in such negotiation, the plaintiff agreed to withdraw the suit. However, contrary to his promise, he has not withdrawn the suit. Therefore, he would submit that the delay of 1952 days was neither wilful nor wanton. It is occurred only upon the breach of trust committed by the plaintiff.



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5. However, the learned counsel for the plaintiff would strongly object the said contention and would submit that there was no compromise between the plaintiff and the defendant and that there was no promise made by the plaintiff for withdrawal of suit.

6. This Court has given anxious consideration to the submissions of the learned counsel on either side.

7. In order to substantiate his case, the petitioner herein has examined three witnesses.

8. The learned counsel for the respondent would invite the attention of this Court in respect of the petitioner's evidence, wherein he has categorically admitted that after the receipt of summons, though he occasionally met the plaintiff, had no occasion to speak with him. It is also the further submission of the learned counsel for the respondent that the defendant has not approached the Court only upon the alleged promise given by P.W.2. Therefore, the submission made by the learned counsel for the respondent



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that the defendant has not proved the alleged settlement in pursuance of the receipt of summons by the defendant, has to be accepted.

9. Furthermore, the Court below after elaborately gone into the factual position, has arrived at a conclusion that there is no sufficient cause for condonation of delay and this Court could not find any perversity in the order.

10. In the result, this Civil Revision Petition stands **dismissed**. There shall be no order as to costs.

**21.09.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
ebsi

To  
1. The Principal District Munsif Court,  
Kumbakonam.



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**C.KUMARAPPAN,J.**

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