



C.R.P(MD)No.2056 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.2056 of 2022

and

C.M.P(MD)No.9395 of 2022

1.G.Lakshmi

2.Senthilkumar

3.Rajkumar

4.Prema

...Revision Petitioners/
Petitioners/Defendants

Vs.

Paraman

...Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 12.09.2022 made in I.A.No.693 of 2021 in O.S.No.1064 of 2017 on the file of the Subordinate Judge, Thirumangalam.

For Petitioners : Mr.D.Balamurugapandi

For Respondent : Mr.S.Prabhu



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ORDER

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The present Civil Revision Petition has been filed against the order dated 12.09.2022 in I.A.No.693 of 2021 in O.S.No.1064 of 2017 on the file of the Subordinate Judge, Thirumangalam.

2. The petitioners are the defendants in O.S.No.1064 of 2017 before the Subordinate Judge, Thirumangalam. The suit was filed by the respondent to recover a sum of Rs.6,00,000/-. The suit is based on the mortgage deed executed by the first petitioner's husband and other petitioners' father, namely, Kengaiya in favour of the respondent/plaintiff on 07.11.2011. The time for repayment of amount was three years and three years period would have been expired on 06.12.2014.

3. In the suit after the summons were served on the petitioners, the petitioners were set *ex parte* on 08.08.2019. Pursuant to the order passed on 08.08.2019 setting the petitioners *ex parte*, the respondent/plaintiff filed I.A.No.219 of 2020 for a final decree. In I.A.No.219 of 2020, the Court has ordered notice on the petitioners. The petitioners also appeared through a counsel on 21.09.2021 and thereafter, filed I.A.No.693 of 2021 on 17.11.2021 to condone the delay of 715 days from 08.08.2019 setting



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the petitioners *ex parte* in O.S.No.1064 of 2017. In the affidavit filed in support of the above application, the petitioners have stated that the first petitioner's husband/father of the other petitioners had repaid the loan during his life time together with interest and thereafter, O.S.No.1064 of 2017 was filed.

4. It is submitted that there was conciliation between the parties in the presence of village elders and the respondent/plaintiff had undertaken to withdraw the suit. Believing the same, the petitioners did not appear and therefore, they were set *ex parte* on 08.08.2019. It is submitted that the petitioners have a fair chance to succeed. That apart, it is submitted that after I.A.No.219 of 2020 was filed for final decree, notice was ordered and the counsel was engaged, who appeared on 21.09.2021. It is submitted that when I.A.No.219 of 2020 was filed, world over and in India second wave of Covid-19 pandemic was still there. Therefore, first petitioner, who is a senior citizen could not appear before the Court and prayed that the Court to allow the present Civil Revision Petition by setting aside the impugned order, dated 12.09.2021 rejecting the application filed for condoning the delay of 715 days in filing the application for setting aside the *ex parte* order dated 08.08.2019.



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5. Per contra, the learned counsel for the respondent would submit that the impugned order is well reasoned and requires no interference. It is further submitted that the affidavit filed in support of I.A.No.693 of 2021 is bereft of details. There is no clear explanation as to why the petitioners did not take any steps for setting aside the *ex parte* order setting the petitioners *ex parte* on 08.08.2019. Earlier, the parties were in dialogue that the petitioners believe that the respondent will withdraw the suit and not pursue further are merely a self-serving statement of the petitioners. It is submitted that the amount was borrowed as early as on 07.11.2011 and till date no amount has been paid. Although, it is the case of the petitioners that the first petitioner's husband/father of the other petitioners, namely, Kengaiya has paid the entire amount and discharge the loan. There is no truth in the statement and therefore, the affidavit itself based on false averments. Hence prayed for dismissal of the present Civil Revision Petition.

6. I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsel for the respondent.



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7. The petitioners have not clearly explained the reasons for condoning the delay. However, the fact remains that the property in question is a residential property, wherein, the petitioners are residing. The preliminary decree came to be passed on 02.11.2019. Therefore, it confirms that as on date, the petitioners were liable to pay a sum of Rs.6,00,000/- together with interest accrued thereon on the strength of the Mortgage deed, dated 07.11.2011.

8. Considering the fact that the petitioners have no documents to substantiate before this Court at this stage to prove that the first petitioner's husband/father of the other petitioners has discharged the loan liability to the respondent/plaintiff in respect of the mortgage deed, dated 07.11.2011, I am inclined to set aside the impugned order on terms. The petitioners shall deposit 25% of the decree amount within a period of 8 weeks from the date of receipt of copy of this order. Subject to such compliance, all further proceedings in O.S.No.1064 of 2017 and I.A.No. 219 of 2022 shall be kept in abeyance. I.A.No.693 of 2021 for condoning the delay shall stand allowed subject to such compliance. It is made clear that in case the petitioners fail to comply with this order, the application filed by the petitioners for condoning the delay in setting aside the *ex*



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parte order which shall stand allowed by this order shall be vacated *sine die*. In case the petitioners complies with the order of this Court, the learned Subordinate Judge, Thirumangalam shall allow the consequent application to set aside the preliminary decree and endeavour to dispose of the suit in O.S.No.1064 of 2017 within a period of 15 months thereafter.

9. The present Civil Revision Petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The learned Subordinate Judge,
Thirumangalam.
2. The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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