



C.R.P(MD)No.2579 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**C.R.P(MD)No.2579 of 2018**  
**and**  
**C.M.P(MD)No.11352 of 2018**

T.Asai ... Petitioner /appellant/ petitioner/defendant

.Vs.

N.Anandha Krishnan (Died)

1.Uma Maheswari

2.A.Rajalakshmi ... Respondent / Respondents/ Respondents  
Plaintiffs

**PRAYER:** Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, against the fair and decretal order, dated 04.10.2018 made in C.M.A.No.33 of 2017 on the file of II Additional Subordinate Court, Madurai, confirming the fair and decretal order dated 17.06.2017, made in I.A.No.491 of 2014in O.S.No.126 of 2012 on the file of District Munsif, Madurai Taluk.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents :Mr.Arjun  
for Mr.N.Vallinayagam for R1 & 2



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C.R.P(MD)No.2579 of 2018

## **ORDER**

This Civil Revision Petition is against the judgment and decree in C.M.A.No.33 of 2017, dated 04.10.2018 on the file of the II Additional Sub Court, Madurai, confirming the dismissal of I.A.No.491 of 2012, which was filed under Order 9 Rule 13 r/w Section 151 C.P.C, to set aside the exparte decree passed in O.S.No.126 of 2012.

2. The case of the revision petitioner in the said application under Order 9 Rule 13 r/w Section 151 C.P.C., was that though he entered appearance in the suit, he did not file the written statement in time and therefore, he was set exparte. He was unable to contact the Advocate and give particulars for filing counter and written statement, because of ill-health and that the application was filed without any delay i.e., within a period of 30 days from the date of exparte decree.

3. The said application was resisted by the respondents/ plaintiffs stating that the revision petitioner was set exparte earlier on 31.10.2012 and in the interregnum period, because the plaintiffs, who originally filed the suit, died, the delay occurred and the legal



C.R.P(MD)No.2579 of 2018

representatives had to be brought on record and subsequently, after lapse of almost 2 years, the exparte decree came to be passed on 09.07.2014.

The respondents / plaintiffs have denied the averments and allegations set out in the application filed under Order 9 Rule 13 r/w Section 151 C.P.C on the ground that it is a clear abuse of process of Court and would not deserve any indulgence.

4. The trial Court, in and by order, dated 17.06.2017, dismissed the said application on the ground that the petitioner did not follow up the suit diligently. As against the said dismissal, the Revision Petitioner preferred an Appeal in C.M.A.No.33 of 2017, before the II Additional Sub Judge, Madurai. The order of the trial Court dismissing the application seeking to set aside the exparte decree was confirmed in the said C.M.A.

5. Aggrieved by the said dismissal of his application, the revision petitioner is before this Court, challenging the said order on the grounds that the Courts below failed to see that the revision petitioner had filed the set aside application in time and without any delay and in order to render substantial justice to the parties, the Courts below ought



C.R.P(MD)No.2579 of 2018

to have allowed the application and given an opportunity to the revision petitioner to defend the suit allegations.

6. I have heard the learned counsel for the petitioner as well as the respondents.

7. No doubt, the Courts below, namely, the trial Court as well as the First Appellate Court have concurrently dismissed the application filed under Order 9 Rule 13 r/w. Section 151 C.P.C. The suit is one for recovery of possession and also for mandatory injunction to remove unauthorized construction put up in one schedule of the property and also for permanent injunction. The defendant has filed written statement along with the application to set aside the exparte decree without giving any loss of time, that is on 06.08.2014, pursuant to the exparte decree on 09.07.2014.

8. I am unable to see any lack of *bonafides* on the part of the learned counsel for the revision petitioner. Considering the fact that the reliefs sought for in the suit are quite substantial in nature, the interests of justice would be met only if the revision petitioner is afforded an



C.R.P(MD)No.2579 of 2018

opportunity to contest the suit on merits. On the other hand, the respondent / plaintiff will not be seriously prejudiced, if the defendants are allowed to contest the suit on merits, instead of throwing his defence out of Court on technical grounds.

9. The learned counsel for the respondents submits that pursuant to the exparte decree, execution proceedings are also pending and the revision petitioner is always having a right before the executing Court. I am unable to accept the said limb of argument advanced by the learned counsel for the revision petitioner, since the scope of the execution petition is not the same as the scope of trial in a regular suit.

10. Considering the above, in order to do substantial justice to the parties, the revision petitioner is entitled to a fair opportunity of being permitted to defend the suit on merits. Exparte decree was passed way back on 09.07.2014 and almost 10 years have lapsed. Though it would be fair and proper to direct the trial Court to frame issues and put the parties on trial and dispose of the suit within a period of three months from the date of receipt of a copy of this order.



C.R.P(MD)No.2579 of 2018

11. In fine, the instant Civil Revision Petition stands allowed and the judgment C.M.A.No.33 of 2017 is set aside and the suit in O.S.No.126 of 2012 is restored to file on payment of cost of Rs. 2,500/- (Rupees Two Thousand and Five Hundred only) by the revision petitioner to the respondents / plaintiffs (through the counsel on record before this Court) within a period of two weeks from the date of receipt of copy of this order and on showing proof of such payment to the trial Court, the suit shall stand restored to file and the trial Court shall decide the suit on merits, after affording a fair opportunity to both the plaintiff and the defendants and in any event, the suit shall be disposed of within a period of three months from the date of commencement of trial. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

Index: Yes/No  
Internet: Yes/No  
NCC: Yes/No  
Ls

**12.10.2023**



C.R.P(MD)No.2579 of 2018

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To

1. The II Additional Subordinate Court,  
Madurai.
2. The District Munsif,  
Madurai Taluk.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.R.P(MD)No.2579 of 2018

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

Ls

**C.R.P(MD)No.2579 of 2018**

**12.10.2023**