



CRP No.5031 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 05.01.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

**CRP No.5031 of 2023**

K.Arokianathan @ Ravi

... Petitioner

Vs.

K.Krishnamurthy  
...Respondent

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.03.2022 in CMA No.2/2021 on the file of Principal Subordinate Judge, Puducherry, confirming the order dated 27.04.2018 in O.S.No.1367/2011 on the file of First Additional District Munsif, Puducherry.

For Petitioner

: Ms.S.Sucharitha

for Mr.S.Subramanian



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## **ORDER**

This Civil Revision Petition has been filed to set aside the order dated 09.03.2022 in CMA No.2/2021 passed by the learned Principal Subordinate Judge, Puducherry, confirming the order dated 27.04.2018 passed in O.S.No.1367/2011 by the learned First Additional District Munsif, Puducherry.

2. The respondent herein, who is the plaintiff in O.S.No.1367/2011, has filed the above suit against the petitioner herein/defendant seeking delivery of vacant possession and also for damages. The learned First Additional District Munsif, Puducherry, vide order dated 27.04.2018, has returned the plaint, as the Court has no pecuniary jurisdiction and directed the petitioner to present the plaint before the competent court, by granting two months time. Challenging the above order, the respondent has filed an Appeal in CMA No.2/2021 before the learned Principal Subordinate Judge, Puducherry. The learned Subordinate Judge, has dismissed the appeal on



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09.03.2022 and granted one month time to re-present the plaint before the competent court of pecuniary jurisdiction. Assailing the above order, the petitioner herein/defendant has filed the present civil revision.

3. Heard the learned counsel for the petitioner and I have perused the materials on record.

4. On perusal of records, it reveals that the respondent herein has filed the suit for delivery of vacant possession and permanent injunction and the plaint was returned by the learned Munsif, directing the respondent/plaintiff to re-present the same either before the Subordinate Court, Pondicherry or before the Principal District Court, Pondicherry, vide order dated 27.04.2018.

5. The respondent/plaintiff has filed an appeal before the Subordinate Judge, Puducherry to set aside the above order dated 27.0.2018 and to direct the I Additional District Munif Court, Puducherry to decide the suit on merits. However, pending appeal, the respondent/plaintiff has filed a memo,



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dated 21.02.2022 stating that he is intended to prosecute the suit before the Subordinate Judge, Puducherry (in which the appeal was pending) and also ready to re-present the returned plaint with correct market value of the property, mentioned in the sale deed and to pay the court fee. Therefore, he sought to decide the suit on merits and to grant time to re-present the returned the plaint. The petitioner herein/defendant has filed an objection stating that the memo is not maintainable and the relief is only by an order, on merits, in a separate petition along with a petition for condoning the delay.

6. The first appellate court, after hearing both side, has observed that, as the appeal is only a continuation of the suit proceedings, and already the suit was pending for more than 7 years before the Trial Court and at the stage of judgment the plaint has been returned, if again the appellant is directed to file a separate petition to condone the delay, it will cause much prejudice to the parties. Hence, to avoid multiplicity of proceedings, the learned Subordinate Judge has dismissed the appeal and granted one month time to re-present the plaint before the competent court of pecuniary



jurisdiction.

7. The main grievance of the petitioner/defendant is that, since respondent/plaintiff has not pressed the civil miscellaneous appeal, the first appellate court has become functus officio and lost its jurisdiction to grant such extension of time to re-present the plaint. But, when the respondent/plaintiff is intended to prosecute the suit proceedings, by re-presenting the plaint, paying correct court fee, before the court of pecuniary jurisdiction, he shall be given opportunity to adjudicate the dispute. Therefore, the first appellate court has rightly granted one month time to re-present the plaint, to avoid multiplicity of proceedings and I find no infirmity in the order passed by the learned Subordinate Judge,

8. In fine, this civil miscellaneous appeal is dismissed and the impugned order passed by the first appellate court is upheld. No costs.

**05.01.2024**

Index: Yes/No

Internet: Yes/No



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**To**

1. The Principal Subordinate Judge, Puducherry.
2. The First Additional District Munsif, Puducherry.



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**V.SIVAGNANAM, J.,**

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