



C.R.P.(PD) (MD).No.2396 of 2015

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

**DATED : 01.08.2024**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

C.R.P.(MD)No.2396 of 2015

1. Boopathi

2. K.Senthil

3. Deivanai

... Revision Petitioners/  
Petitioners/  
Defendants 6 to 8

**-vs-**

Idol Sri Meiporulnathaswamy,  
Modakkur,  
Represented by its Executive Officer,  
Sri Kalyana Pauspatheeswaraswamy Devasthanam.

... Respondent/  
Respondent/  
Plaintiff

**PRAYER:** Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decreetal order passed in I.A.No.107 of 2013 in O.S.No.149 of 2002, dated 27.08.2015, on the file of the Principal District Munsif Court, Karur.

For Petitioners : Mr.K.Suresh

For Respondent : Mr.K.Guhan



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## **ORDER**

The present Civil Revision Petition has been filed by the defendants 6 to 8 in O.S.No.149 of 2002, on the file of the Principal District Munsif Court, Karur, challenging the dismissal of an application to condone the delay of 1236 days in filing an application under Order 9 Rule 13 of C.P.C.

2. The respondent herein has filed the above said suit for the relief of declaration and for recovery of possession. The third defendant in the suit had passed away on 25.02.2002. The plaintiff has filed I.A.No.551 of 2003 to condone the delay in setting aside the abatement.

3. Thereafter, the plaintiff has filed I.A.No.195 of 2004, to implead the legal heirs of the deceased third defendant. The said application was allowed on 24.02.2004. Thereafter, the plaintiff has filed I.A.No.415 of 2004 under Order 6 Rule 17 of C.P.C for amending the plaint to implead the legal heirs. The said application was allowed on 21.04.2004.

4. After the amendment was carried out in the plaint, paper publication was ordered for the newly impleaded defendants. The paper publication was



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effected on 24.09.2004 and since the newly impleaded parties have not appeared, they were set *exparte* on 29.09.2004. An *exparte* decree came to be passed on 11.06.2008. Based upon the *exparte* decree, the plaintiff had filed E.P.No.121 of 2011.

5. According to the defendants 6 to 8, after they have received notice in the execution proceedings, they have engaged their counsel for defending the said proceedings. But, later, they came to know that an *exparte* decree has been passed as against them and they have independently filed an application to set aside the said *exparte* decree. Therefore, the present application in I.A.No.107 of 2013 has been filed to condone the delay of 1236 days in filing an application.

6. The plaintiff in the suit has filed a counter contending that before the same Court two other suits in O.S.No. 142 of 2002 and O.S.No.147 of 2002 have been filed by the temple and in those suits the same defendants have appeared through their counsel and filed a written statement. But, later, left to be decided *exparte*. Therefore, the defendants are very well aware of the pendency of the suit and the reason assigned by them in the affidavit to



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condone the delay is not believable.

7. The Trial Court, after considering the pleadings of either parties, has arrived at a finding that the counsel engaged by the defendants had reported “no instructions” and thereafter, *ex parte* order has been passed followed by an *ex parte* decree. In such circumstances, a huge delay in filing the application to set aside the *ex parte* decree cannot be condoned and has proceeded to dismiss the application. Challenging the same, the present Civil Revision Petition has been filed.

8. The narration of the above said facts clearly indicate that the present revision petitioners were impleaded as defendants in the suit only in April 2004. Thereafter, paper publication has been effected upon them. Assuming that they belong to the same village and they are appearing through a counsel in the other suits pending before the Court, it is not known why the service was effected on the newly added defendants through paper publication. In such circumstances, this Court is of the considered opinion that the delay ought to be condoned in the interest of justice, especially, considering the fact that the defendants have chosen to file a written statement along with application to condone the delay.



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9. In view of the above said deliberations, the order passed by the trial Court is hereby set aside and the delay is condoned. The parties are directed to cooperate for expeditious disposal of the trial. Considering the fact that the suit is of the year 2002, the trial Court is directed to dispose of the suit in O.S.No.149 of 2002 on or before **31.12.2024**.

10. With the above said observation, this Civil Revision Petition stands allowed. There shall be no order as to costs.

**01.08.2024**

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

To  
1. The Principal District Munsif Court,  
Karur.



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**R.VIJAYAKUMAR,J.**

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