



C.RP(MD)No.1368 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:01.08.2024

CORAM

**THE HONOURABLE MR JUSTICE D.BHARATHA  
CHAKRAVARTHY**

**C.R.P(MD)No.1368 of 2022**

**and**

**C.M.P(MD)No.5679 of 2022**

K.Jebaraj Rajan

..Petitioner/Respondent/  
Plaintiff

Vs.

1.S.Stella Selvarani  
2.S.Shiny Jeslin Pameela  
3.S.Simon Godson

..Respondents/Petitioners/  
Defendants

Civil Revision Petition is filed under Section 115 of the Code of the Civil Procedure, to call for the records pertaining to the fair and decreetal order dated 28.04.2022 made in I.A.No.138 of 2021 in O.S.No.242 of 2021 on the file of the Sub-Court, Tiruchendur and set aside the same as illegal by allowing the Civil Revision Petition.



C.RP(MD)No.1368 of 2022

For Petitioner  
For Respondents

:Mr.G.Rajaraman  
:Mr.H.Arumugam

**ORDER**

The Civil Revision Petition is filed against the order dated 28.04.2022 made in I.A.No.138 of 2021 in O.S.No.242 of 2021 on the file of the Sub-Court, Tiruchendur.

2.By the said order, the said Interlocutory application filed by the respondents herein to condone the delay of 924 days in filing the application to set aside the ex-parte decree is allowed by the trial Court on payment of cost.

3.Heard Mr.G.Rajaraman, learned counsel appearing for the petitioner and Mr.H.Arumugam, learned counsel appearing for the respondents.

4.The learned counsel for the petitioner submitted that when the ex-parte decree was passed as early as on 12.08.2015, the



C.RP(MD)No.1368 of 2022

WEB COPY

reasons mentioned in the application to condone the delay is insufficient. It is the case of the petitioner that he has never received any notice from the Court.

5. On the other hand, by the information received by this Court, it can be seen that when the application was filed to bring the legal heirs on record as defendants 2 to 4, they duly received notice. In spite of receipt of notice, they chose not to contest the matter. Now we are in the year 2024 at this belated point of time, If the respondents are allowed to contest the matter, grave prejudice will result to the petitioner/plaintiff. The trial Court ought not to have condoned the delay. The trial Court has even given a finding in favour of the petitioner that due to notice had already been served. Once the trial Court found that the reasons mentioned in the affidavit are incorrect/false, the trial Court ought to have dismissed the application.

6. Per contra, Mr.G.Rajaraman, learned counsel appearing on



C.RP(MD)No.1368 of 2022

WEB COPY

behalf of the petitioner would submit that originally the first defendant viz., Sundar Singh was only contesting the suit. He has also filed a written statement on 07.07.2012. It is his case in the written statement that he borrowed money from one Jegatheesan and as a security for repayment of loan, power of attorney was executed. However, by misusing the said power of attorney without passing on any consideration whatsoever, the sale has been effected. Upon the knowledge of the sale, he gave a complaint before the appropriate police on 22.06.2011 and after due inquiry, when an FIR was sought to be filed, the suit was filed on 04.07.2011. As a matter of fact on 07.07.2011 the case in Crime No.111 of 2011 was also registered by the jurisdictional police.

7.I have considered the submissions made on either side.

8.It is true that as per the report of the trial Court, the defendants 2 to 4 in the suit, who are the legal heirs of the first defendant when they were sought to be implemented as parties to



C.RP(MD)No.1368 of 2022

WEB COPY

the suit, received notice in the said application. Be that as it may, there is lapse on the part of the defendants two to four in not promptly defending the suit. When the application is filled with a delay of 924 days, the trial Court has exercised its discretion and condoned the delay on payment of cost. It can be seen that the suit is filed by the plaintiff stating that he purchased the property from the power of attorney agent Jagadeesan.

9. On a perusal of the power of attorney, it can be seen that the deceased first defendant and his family is residing in the property. He is unable to properly maintain the property and therefore, the said power of attorney is nominated as an agent. The power is also given to sell the property and which includes presenting the document before the appropriate Sub-Register. It is in this background even before filing of the suit, when a police complaint has already been given stating that the power has been misused and the suit is sequel to the police complaint, I am of the view that the truth or otherwise of the allegations of the respective



C.RP(MD)No.1368 of 2022

WEB COPY

parties should be gone into by the trial Court.

10. In that view of the matter, when the trial Court has exercised its discretion to condone the delay, I do not find any compelling reasons to interfere in the same and accordingly, finding no merits, the civil revision petition shall stand dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

01.08.2024

NCC:Yes/No  
Ns

To  
The Sub-Court,  
Tiruchendur.

**D.BHARATHA CHAKRAVARTHY, J.**



WEB COPY



C.RP(MD)No.1368 of 2022

Ns

**C.R.P(MD)No.1368 of 2022  
and  
C.M.P(MD)No.5679 of 2022**

01.08.2024