



C.R.P(MD)No.1264 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 08.07.2024

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1264 of 2021

and

C.M.P(MD)No.7263 of 2021

1.Allikrishnan
2.Vishnupriya
3.Vishnuprakash

... Petitioners/Petitioners/
Defendants 2-4

Vs.

Gabriel (Died)

... Respondent/Respondent/
Plaintiff

2.G.Saraswathi
3.G.Babu

... Proposed Respondents

(R2 & R3 are brought on record as Lrs of the deceased sole respondent vide order, dated 20.03.2023 in C.M.P(MD)No.503 of 2022)

(Name of R3 is substituted/amended vide order, dated 28.06.2023 in C.M.P(MD)No.4926 of 2023)

Prayer: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records and set aside the fair and decretal order made in I.A.No.1 of 2019 in O.S.No.92 of 2013, dated 21.04.2021 on the file of Principal District Judge at Nagercoil.

For Petitioners : Mr.M.Dinesh

For R2 & R3 : Mr.K.S.Vamsidhar



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ORDER

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The present civil revision petition came to be filed by the petitioners / defendants 2-4 challenging the order passed by the learned Principal District Judge, Nagercoil, in I.A.No.1 of 2019 in O.S.No.92 of 2013.

2. For the sake of convenience, the parties herein are mentioned as arrayed as in the original suit. The petitioners are the defendants 2 to 4 in the suit. The suit was for recovery of money to a tune of Rs.25,69,500/-. The defendants 1 to 4 have engaged one Advocate, namely Mr.M.S.Moorthy before the learned trial Court. However, despite specific instructions given by the defendants to the trial Court counsel, the said Advocate failed to file the written statement on those dates when the original suit was posted for filing written statement, following which the suit was set *ex parte* and decreed as prayed for on 17.03.2017. However, during the pendency of the said suit, the 1st defendant has passed away on 27.01.2014. The 2nd defendant being a senior citizen and the elder sister-in-law of the deceased 1st defendant, she was not in a health condition to give immediate instructions and engage another counsel for setting aside the *ex parte* decree. As a result of which, with a delay of 642 days, I.A.No.1 of 2019 came to be filed in O.S.No.92 of



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2013 seeking to condone the delay of 642 days in filing a petition to set aside the *ex parte* decree on the file of the Principal District Judge at Nagercoil in the said suit. The said application came to be dismissed on 21.04.2021. Assailing the same, this civil revision petition came to be filed.

3. The learned counsel appearing for the petitioners submitted that, due to the bad health condition of the petitioner herein, that is, the 2nd defendant who is ailing and suffering health issues, she could not approach a counsel for taking sufficient steps to set aside the *ex parte* decree and pressed for interfering with the impugned order.

4. The learned counsel appearing for the respondents submitted that the delay was wanton and pressed for dismissal of the civil revision petition.

5. Considering the fact that the defendants 3 and 4 are students who are pursuing their education in different places and the fact that the 2nd defendant being an ailing senior citizen female, this Court is of the considered view that the learned trial Court ought to have condoned the delay of 642 days. In view of the same, the impugned order passed by the



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learned trial Court in I.A.No.1 of 2019, dated 21.04.2021 is hereby set aside. Taking into account that there is an order of attachment before the judgment in the said suit in O.S.No.92 of 2013, the same shall not be disturbed till the disposal of the suit on merits. The learned trial Court is directed to number the Interlocutory Application for setting aside the *ex parte* decree and pass appropriate orders in accordance with law after giving due opportunity to both the parties within a period of two (2) months from the date of receipt of copy of this order.

6. This Civil Revision Petition is allowed on payment of Cost of Rs.1,000/- (Rupees Thousand only) to the Siddha Centre functioning in the Madurai Bench of Madras High Court on or before **15.07.2024**. Consequently, connected Civil Miscellaneous Petition is closed.

08.07.2024

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

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Note : Issue order copy on 09.07.2024.



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To

- 1.ThePrincipal District Court,
Nagercoil.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J.

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Order made in
C.R.P(MD)No.1264 of 2021

08.07.2024