



C.R.P(MD)No.2848 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.11.2024

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

**C.R.P(MD)No.2848 of 2024
and
C.M.P(MD)No.16279 of 2024
and
C.M.P(MD)No.14039 of 2024
in
C.R.P(MD)SR.No.70748 of 2024**

C.R.P(MD)No.2848 of 2024

1.K.Kathirvel

2.K.Balamuruganantham

3.K.Vetrivel Kannan

... Petitioners / Defendants

Vs

Hukkam Chand (Died)

1.Kamalesh Kumar

2.Palvanth Roy Cork

3.Suresh Kumar Gupta

4.Sathis Goyal

... Respondents / Plaintiffs 2 to 5

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair order dated 17.10.2024 passed in the execution



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petition in E.P.No.105 of 2020 in O.S.No.10 of 2019 on the file of the Fifth Additional District and Sessions Court, Madurai.

For Petitioners : Mr.J.Barathan

For R1 : Mr.K.Sudalaiyandi

For R2 to R4 : Mr.H.Arumugam

C.M.P(MD)No.14039 of 2024 in C.R.P(MD)SR.No.70748 of 2024

1.K.Kathirvel

2.K.Balamuruganantham ... Petitioners / Defendants 1 and 2

Vs

Hukkam Chand (Died)

1.Kamalesh Kumar

2.Balwant Rai Garg

3.Suresh Kumar Gupta

4.Sathish Kumar ... Respondents / Plaintiffs 2 to 5

Prayer in **C.R.P(MD)SR.No.70748 of 2024** : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and executable order dated 05.12.2022 passed in the application in I.A.No.51 of 2021 in O.S.No.10 of 2019 on the file of the Fifth Additional District and Sessions Court, Madurai.



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Prayer in **C.M.P(MD)No.14039 of 2024** : This Civil Miscellaneous Petition is filed under Section 5 of Limitation Act, to condone the delay of 553 days in filing the main Civil Revision Petition.

For Petitioners : Mr.J.Barathan

For R1 : Mr.K.Sudalaiyandi

For R2 to R4 : Mr.H.Arumugam

COMMON ORDER

These Civil Revision Petitions are filed to set aside the the fair order dated 17.10.2024 passed in the execution petition in E.P.No.105 of 2020 in O.S.No.10 of 2019 on the file of the Fifth Additional District and Sessions Court, Madurai and to set aside the fair and executable order dated 05.12.2022 passed in the application in I.A.No.51 of 2021 in O.S.No.10 of 2019 on the file of the Fifth Additional District and Sessions Court, Madurai.

2. The facts in brief is that the suit in O.S.No.10 of 2019 was filed by the respondents herein for recovery of possession and Rs.5001/- per month towards use and occupation and for costs. The revision



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petitioners remained ex parte before the trial Court. So ex parte order was passed on 20.09.2019. To set aside the ex parte decree, I.A.No.51 of 2020 was filed to condone the delay of 361 days in filing the petition to set aside the ex parte decree, stating that the respondents have not correctly stated their address in the plaint as well as the Court notice. In the suit notice, the address was mentioned as D.No.163, Nethaji Road, Madurai, whereas in the plaint, it is mentioned as D.No.4/219, Kandhasamy street, Sri Mapillai Vinayagar Nagar, Madurai. During the relevant time, the revision petitioner were not residing in the that address. The Court notice was returned as refused. But the Court did not examine the serving officer for verifying the endorsement. Only after receiving the notice in the execution petition, passing of the ex parte decree came to their notice. Even in the execution petition, the death of the first plaintiff was not intimated to the Court. Their legal representatives were not brought on record. The trial Court dismissed the petition without properly appreciating the reasons. Against which this revision petition is preferred.



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3. In preferring this Civil Revision Petition, there is a delay of 553 days and reason for the delay, according to the affidavit is that, there were financial crisis during the relevant period. They were not in a position to pay advocate fees. They applied for copy. The copy was made ready on 16.10.2023. After that only they entrusted the papers to the present advocate and in that process, there is a delay of 553 days.

4. Regarding C.R.P(MD)No.2848 of 2024, as mentioned above, this revision petition is preferred against the E.P.No.105 of 2020 dated 17.10.2024. Since C.R.P(MD)SR.Nos.70748 of 2024 and C.M.P(MD)No. 14039 of 2024 are pending, the execution Court ought to have ordered for execution of decree.

5. Heard both sides.

6. The merit of the petition filed in I.A.No.51 of 2021 before the Fifth Additional District and Sessions Judge, Madurai, assumes importance. But the fact remains that the petition was filed to condone



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the delay of 361 days in preferring the petition to set aside the ex parte decree. An order was passed in that petition by the trial Court on 05.12.2022. They remained silent and unable to take further action in preferring the Civil Revision Petition on the ground of financial crisis. Absolutely, this Court is not in a position to appreciate the ground. They already remained ex parte before the trial Court. Ex parte decree was passed and there is a delay of 361 days. Even after the dismissal of the petition, the revision petitioner ought to have been vigilant in prosecuting the matter in a time, at least reasonable. Now they say that there is 361 days delay and the only reason assigned by them is their financial position. What was their financial position is absolutely without any evidence. This sort of bald allegation cannot be appreciated at all. Atleast, they would have disclosed their avocation in the affidavit. Nothing is available in the affidavit to show their avocation, financial position and earnings etc.

7. It has been pointed out by the learned counsel for the respondents that even the copy application in I.A.No.51 of 2021 was filed after a delay of ten months and reason for the above said delay was



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not explained. He went to the extent of stating that for filing copy application, only Rs.5/- stamp is charged. So according to the respondent herein, it shows the lethargic attitude of the petitioner in prosecuting the matter in a proper and timely manner.

8. Learned counsel for the petitioners went on to submit before the Court regarding the merits of the suit. According to them, their defence is that the document was executed only as a security, never it was intended to be sold to the respondents. According to their plea, to prove that the document was executed only as a security for the loan obtained and the decree itself has become unenforceable in nature, learned counsel for the petitioner wants to convince this Court by making out the above said probable defence.

9. But as mentioned above, the reason mentioned in the Civil Revision Petition is unreasonable without any basis. Such sort of acts will not be encouraged. This petition is devoid of merits. So the C.M.P(MD)No.14039 of 2024, is dismissed. Consequently, the order passed by the execution Court in E.P.No.105 of 2020 also requires no



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interference. Accordingly, the order dated 17.10.2024 passed in the execution petition in E.P.No.105 of 2020 in O.S.No.10 of 2019 by the Fifth Additional District and Sessions Court, Madurai, is sustained.

10. For the above reasons, the Civil Revision Petition is dismissed and C.M.P(MD)No.14039 of 2024 is also dismissed. C.R.P(MD)SR.No. 70748 of 2024 is dismissed at the SR stage itself. No costs. Consequently, connected miscellaneous petition stands closed.

20.11.2024

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

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To

- 1.The Fifth Additional District and Sessions Court, Madurai.
- 2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN, J.

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ORDER
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