



C.R.P.(MD)No.2560 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2024

CORAM

**THE HON'BLE MR.JUSTICE G.ILANGO VAN**

**C.R.P.(MD)No.2560 of 2022**  
**and C.M.P.(MD).No.12578 of 2022**

J.Soundara Pandian ... Petitioner/Respondent/Defendant

Vs.

S.V.Ramasamy ... Respondent/Petitioner/Plaintiff

**PRAYER :** Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to call for the records relating to the order passed by the learned Principal Subordinate Judge, Madurai, in I.A.No.116/2021 in O.S.No.1138/2011, dated 18-08-2022, by allowing this civil revision petition and set aside the same.

For Petitioner : Mr.K.Muraleedharan

For Respondents : Mr.R.Ramadurai

**ORDER**

This civil revision petition has been filed to set aside the order passed by the learned Principal Subordinate Judge, Madurai, in I.A.No. 116/2021 in O.S.No.1138/2011, dated 18-08-2022.



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2.The facts in brief:

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Suit in O.S.No.1138 of 2011 was filed by the respondent herein seeking the relief of recovery of some Rs.6,86,000/-, with subsequent interest at the rate of 18% on the principal amount of Rs.4,40,000/- with costs, etc.

3.The defendant appeared and filed the written statement. But, when the matter was called for the trial, on 18.07.2017, the plaintiff did not appear and so it was dismissed for default. To set aside the dismissal order, he filed I.A.No.116 of 2017 setting out the following facts:

**3.1.**His daughter's marriage was scheduled to be held on 11.06.2017. He made arrangements for that. So he could not contact his advocate to inform the inconvenience.

4.That was resisted by the revision petitioner herein by filing counter stating that no proper reason is assigned and even the reason assigned is not true and correct.



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5.After hearing both sides, the trial Court thought it fit to allow the petition and of course with condition to pay a sum of Rs.5,000/- for inconvenience caused to the revision petitioner herein. Against which this revision is preferred.

6.Heard both sides.

7.The learned counsel for the revision petitioner directly draws the attention of this Court to the counter affidavit filed by the respondent, wherein, they have elaborated the conduct of the respondent. So according to him, the respondent through his wife filed suit in O.S.No. 1136 of 2011 for recovery of Rs.4,52,400/-. That suit was posted along with this suit for trial. He denied the signature in the undertaking letter. Based upon which the suit were filed. So those documents were sent for expert examination. Report was received. There was no appeal or revision by the plaintiff. The suit was adjourned to various dates and finally, it was posted on 26.07.2016. The respondent was present before the Court and submitted that he is not willing to prosecute the suit. Recording that submissions only the suit was dismissed for default on



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that date. So again I.A.No.916 of 2016 was filed to restore the suit on payment of cost. That was also allowed. In spite repeated adjournment the respondent did not present before the Court and so it was dismissed for default on 18.07.2017, by pointing out these dates and events, now it is submitted by the revision petitioner that the reason assigned by the respondent herein was not bonafide. But, the trial Court without taking into account the conduct of the respondent allowed the application.

8. Whether the respondent herein expressed his unwillingness to prosecute the matter before the trial Court on the previous date is not clear on record. There is no finding by the trial Court on that particular aspect. But, however, later suit was restored to file and again second default is committed by the respondent. But, reason assigned by the respondent was appears to be genuine one. So on that ground only the trial Court allowed the application. Since the trial Court exercised the discretionary jurisdiction in a particular manner, unless the revision petitioner is able to substantiate or prove that it was exercised in improper or illegal manner, revision will not lie. But, however considering the oldness of the matter the cost of Rs.5,000/- imposed by



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the trial Court can be enhanced to Rs.10,000/-. So only that relief is to be entitled to be granted to the revision petitioner and nothing more.

9.In the result, this revision is dismissed modifying the order passed by the trial Court directing the respondent to pay a sum of Rs.10,000/- (Rupees Ten Thousand only) as cost to the revision petitioner within a period of fifteen days from the date of receipt of a copy of this order. On payment of cost, the trial Court shall restore the suit on its file and proceed in accordance with law. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**29.11.2024**

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

To

- 1.The Principal Subordinate Judge, Madurai.
- 2.The Section Officer, E.R.Section/V.R.Section,  
Madurai Bench of Madras High Court, Madurai.



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**G.ILANGO VAN,J.**

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