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CRP.No.1652 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:28.10.2025

Pronounced on: 07.11.2025

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

**CRP. No.1652 of 2023
and CMP. No.10805 of 2023**

P.Shanmugham

Petitioner(s)

Vs

P.Gunasekaran

Respondent(s)

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Order and decretal order dated 11.04.2023 made in I.A. No.98 of 2019 in O.S. No.397 of 2008 on the file of the Principal District Munsif at Alandur.

For Petitioner : Mr.G.Govarthanan

For Respondent : Mr.M.Thangadurai

ORDER

The defendant, whose application for condonation of delay of 240 days in filing the application to set aside the exparte decree was dismissed, is the revision petitioner.



2. I have heard Mr.G.Govarthanan, learned counsel for the petitioner and Mr.M.Thangadurai, learned counsel for the respondent.

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3. The learned counsel for the petitioner would submit that the petitioner had satisfactorily explained the delay by contending that the petitioner was suffering from jaundice and was taking native treatment and he was bedridden from about a year and during this period, the suit has been decreed exparte and immediately on receipt of notice in the Execution Petition, the petitioner has approached his counsel and taken steps to have the exparte decree set aside. The learned counsel for the petitioner would further submit that the counsel did not intimate the petitioner about the suit being decreed exparte and for the fault of the counsel, the petitioner should not suffer.

4. He would further state that the sale deed which has been executed in favour of the petitioner has been unilaterally cancelled and the plaintiff is none else than the brother of the petitioner/defendant. He would therefore contend that the suit being one for declaration and recovery of possession, an opportunity may be given to the petitioner to contest the suit on merits. He would rely on the decision of this Court in *Joe Micheal Praveen Vs. Apsara Reddy and another* in O.S.A.323 of



2025, *order dated 07.10.2025*, where this Court held that if it is found that conduct of the party is not totally indifferent, resulting in the exparte decree and the counsel had failed to appear and protect the interest of the applicant who suffered the decree, then an opportunity ought to be given to the petitioner to contest the suit on merits.

5. Per contra, Mr.M.Thangadurai, learned counsel for the respondent/plaintiff would submit that the revision petitioner has breached the trust placed by the respondent and in collusion with the father, has knocked off the valuable property of the petitioner, taking advantage of the power of attorney executed by the respondent in favour of the father of the parties. He would further state that though the petitioner filed 11 documents to support the condonation of delay application, the Trial Court has rightly found that none of the documents were relevant to the fact in issue and further the claim of the petitioner that he was bedridden was falsified by Ex.P7, property tax receipts itself. He would therefore state that the Trial Court has rightly dismissed the condonation of delay application, finding that there is no bonafide reason or sufficient cause. It is therefore contended by Mr.M.Thangadurai, learned counsel for the respondent that there is no merit in the revision and he prays for dismissal of the same.



6. The learned counsel for the respondent has relied on the following decisions, in support of his contentions:-

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(i) *Somasundaran Vs. Nataraj and another*, reported in, 2025 (1) CTC 129 (Mad);

(ii) *Chitravel and another Vs. Jothimani*, reported in, 2024 (2) CTC 197 (Mad);

(iii) *Vatchala Vs. T.Paari*, reported in, 2023 (2) MWN (Civil) 283 (Mad);

(iv) *D.Anandaraj Vs. K.R.Vengoba Rao*, reported in, 2023 (1) MWN (Civil) 522 (Mad); and

(v) *Gunasekaran Vs. Saravanan*, reported in, 2023 (1) T.N.C.J.71 (Mad).

7. I have carefully considered the submissions advanced by the learned counsel on either and I have also gone through the records, including the order impugned in the revision petition.

8. Admittedly, the parties are brothers. The respondent/plaintiff had executed a power of attorney on 11.03.1997 in favour of his father in order to alienate/convey the property belonging to the respondent, in favour of prospective buyers. However, according to the respondent,



misusing the power of attorney, the revision petitioner has got a sale deed executed in his favour on the very next day i.e., 12.03.1997, which has been cancelled by the respondent by cancellation of the sale deed dated 18.11.1999. In fact, on 15.07.1999, the respondent has also cancelled the power of attorney executed by the respondent in favour of his father. The father died in the year 2001 and it is only after the death of the father who was appointed as the power agent, the respondent has chosen to file the suit that too, only in 2008, for declaring himself to be the owner of the property and also for recovery of possession from the revision petitioner.

9. Admittedly, the petitioner has been in physical possession of the suit property and it is the case of the petitioner that after the sale deed in his favour, he has improved the property, expending huge sums of money. It is also seen that the revenue records have been mutated in the name of the revision petitioner. Though it is contended by the learned counsel for the respondent that despite contending that the petitioner intends to challenge the unilateral cancellation of sale deed, no steps have been taken till date, countering the said argument of the learned counsel for the respondent, Mr.Govarthanan, learned counsel for the petitioner that in view of the decision of the Full Bench in *Latif Estate Line India Limited*,



rep. by its Managing Director Vs. Hadeeja Amman and others, reported in, 2011 (2) CTC 1, there was no necessity for the petitioner to challenge the unilateral cancellation of sale deed as the Full Bench has held that such unilateral cancellation of a registered conveyance deed was invalid in the eye of law.

10. Insofar as the reasons assigned by the petitioner for delay, it is the case of the petitioner that only upon receipt of notice in the Execution Petition, he met his counsel and he was then informed about the exparte decree. It is the further case of the petitioner that he was suffering from jaundice and was bedridden for one year and he was taking native treatment. The Trial Court has non suited the petitioner for non production of proof in this regard. When it is the specific case of the petitioner that he was taking only native treatment, the Court could not have expected the petitioner to produce medical records to substantiate the claim in the affidavit. The Court ought to have seen that the delay was only 240 days and not inordinate and there was no lack of diligence on the part of the petitioner in approaching the Court and it is also alleged that the counsel has also not informed the petitioner about the fate of the suit. As held by the Division Bench of this Court in *Joe Micheal Praveen's* case (referred herein supra), the party should not



suffer when the reasons are found to be bonafide and satisfactory, then the Court is entitled to look into the merits of the claim and taken a decision with regard to condonation of delay.

11. In the present case, the sale deed has been executed in favour of the revision petitioner way back on 12.03.1997 and suit was filed only in 2008. Admittedly the petitioner is in possession of the property and all revenue records are also mutated in the name of the petitioner. There is force in the submissions of the learned counsel for the petitioner that during the lifetime of the father, the respondent did not take any action against the petitioner, seeking recovery of possession. The mere fact that the property tax has been paid by the petitioner and receipts have been produced by the petitioner, during the relevant point of time when the petitioner claims to be suffering from jaundice, cannot be the ground to disbelieve the case of the petitioner. The Trial Court has failed to see the real intent behind filing of the Exhibits, which was only to show that the petitioner has been in enjoyment of the properties right from 1997. Unfortunately, the Trial Court has put it against the petitioner as not helping his cause for seeking condonation of delay. Considering that the reasons are bonafide and acceptable, the Trial Court ought to have given an opportunity to the petitioner to contest the suit on merits, especially



since substantial reliefs are sought for in the suit.

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12. Insofar as the decisions relied on by the learned counsel for the respondent, I find that in all the five cases, the delay has been inordinate viz., 1566 days in the first case, 1757 days in the second case, 1374 days in the third case, 1382 days in the fourth case and 4697 days in last case. In such circumstances, the Courts held that for such long period of time, there was no evidence to support the illness and under such circumstances, the Court dismissed the application for condonation of delay. However, in the present case, the delay is only 240 days and immediately upon receipt of notice in the Execution Petition, the application has been filed to set aside the exparte decree. Considering the fact that substantial rights of the parties are also involved, the Trial Court ought to have exercised discretion and condoned the delay, instead of dismissing the application for condonation of delay, especially when the delay is not inordinate and sufficient reasons have been set out to explain the delay as well. In the light of the above, I am inclined to set aside the order passed in I.A. No.98 of 2019.

13. The learned counsel for the respondent would submit that the respondent has now been advised to seek additional relief for declaration



and necessary permission may be granted. However, the suit has already been decree ex-parte and it is now only the Order IX Rule 13 application that has to be considered. Therefore, subject to the Order IX Rule 13 application being disposed of and in the event of any requirement to proceed with the trial of the suit, it shall be open to the respondent to seek amendment of the plaint, in accordance with law.

14.In fine, this Civil Revision Petition is allowed. Consequently, the order passed by the learned Principal District Munsif at Alandur in I.A. No.98 of 2019 in O.S. No.397 of 2008 is set aside. The Trial Court shall dispose of the Application under Order IX, Rule 13 CPC within a period of four (4) weeks and subject to the decision in the same, take further steps for disposal of the suit in accordance with law. Connected Miscellaneous Petition is closed. No costs.

07.11.2025

rkp

Index : Yes / No

Internet : Yes / No

To:

The Principal District Munsif at Alandur.



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P.B.BALAJI, J.,

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Pre-delivery order in
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