



C.R.P.No.3355 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED : 21.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.3355 of 2024
and C.M.P.No.18030 of 2024

1. N.Manigoundan
2. M.Rasathi
3. M.Ramesh

... Petitioners

Vs

M.Thangam

... Respondent

PRAYER : Civil Revision Petition filed under Section 115 of the Civil Procedure Code, pleaded to set aside the fair and decreetal order dated 01.02.2024 in I.A.No.4 of 2023 in O.S.No.67 of 2021 on the file of the Subordinate Court, Rasipuram.

For Petitioners : Mr.B.Ravi

For Respondent : Ms.D.Jeevitha
for Mr.R.Nalliyappan

ORDER

This Civil Revision Petition has been filed against the dismissal order passed by the learned Subordinate Judge, Rasipuram, in I.A.No.4 of 2023 in I.A.No.5 of 2023 in O.S.No.67 of 2021 on 01.02.2024.



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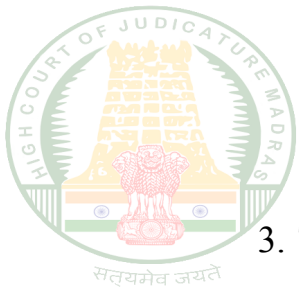
WEB COPY 2. The brief facts of the case are as follows :-

2.1. The revision petitioners are the defendants in the suit filed by the respondent/plaintiff before the Subordinate Court, Rasipuram, in O.S.No.67 of 2021 seeking specific performance by executing a sale deed pursuant to the sale agreement dated 16.04.2019.

2.2. The petitioners/defendants had entered appearance through their counsel, however, they were set ex-parte for non filing of written statement and subsequently, an ex-parte decree came to be passed on 27.06.2022.

2.3. Thereafter, the petitioners/defendants have filed an application in I.A.No.5 of 2023 under Order IX Rule 13 seeking to set aside the ex parte decree dated 27.06.2022 along with the application in I.A.No.4 of 2023 under Section 5 of the Limitation Act seeking to condone the delay of 448 days in filing the petition to set aside the *ex-parte* decree.

2.4. The trial Court, holding that the petitioners have not shown sufficient cause, had dismissed the application in I.A.No.4 of 2023 vide order dated 01.02.2024. Challenging the same, the present civil revision petition has been filed.



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3. The submissions of the learned counsel appearing for the petitioners are

WEB as follows :-

3.1. The petitioners are the defendants in O.S.No.67 of 2021. The respondent/plaintiff had filed the suit during the second wave of Covid and the petitioners have engaged a counsel, however, since the first petitioner, who was following the case, was affected by viral fever, he was unable to meet his counsel and the written statement was not filed. Thereby, the petitioners/defendants were set ex parte on 08.12.2021 and later, an ex parte decree came to be passed on 27.06.2022.

3.2. The petitioners were not informed by their counsel about the ex parte decree and only after receipt of notice in the execution petition, they have approached their counsel. Since there was no proper response from their earlier counsel, they had engaged another counsel and filed the petition seeking to set aside the ex parte decree with the delay of 448 days.

3.3. The sale agreement was executed as a security for a loan transaction. The sale agreement was executed on 16.04.2019 and as per the agreement, an amount of Rs.6,50,000/- was paid on the same day and the balance amount of Rs.1 lakh was undertaken to be paid within two years and the same



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would clearly show that the sale agreement was executed as a security for a loan transaction.

3.4. The trial Court had not framed any issues with regard to the readiness and willingness on the part of the respondent/plaintiff and there is no discussion in the judgment with regard to the readiness and willingness on the part of the plaintiff. The petitioners have got a good case on merits and if the ex parte decree is not set aside and the petitioners are not given a chance to contest their case on merits, it would cause undue hardship to them.

3.5. The petitioners, to show their bonafide, are ready to deposit a sum of Rs.10 lakhs within the time frame to be fixed by this Court. Hence, he prayed to set aside the impugned order dated 01.02.2024 and consequently set aside the ex parte decree.

4. Per contra, the learned counsel appearing for the respondent submitted that the petitioners have not diligently followed the suit and they have not filed the written statement within time, thereby, they were set ex parte on 08.12.2021 and the judgment and decree came to be passed on 27.06.2022. She further submitted that even after the receipt of notice in the execution petition, the petitioners have

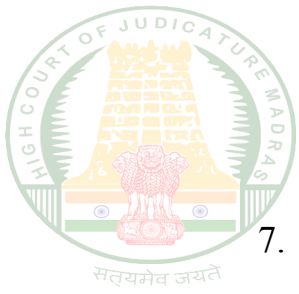


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not approached the court immediately. She also submitted that the trial Court, rightly finding that the petitioners have not shown sufficient cause for the delay, had dismissed the application. Hence, she seeks to dismiss the revision petition.

5. Heard both sides and perused the materials available on record.

6. A perusal of the record shows that the petitioners are the defendants in O.S.No.67 of 2021 and it is the case of the petitioners that the first petitioner was following the case and since he was affected by viral fever, he was unable to appear before the trial Court properly and instruct his counsel, thereby, the petitioners were set ex parte. This Court also finds that the trial Court had not framed any issues and made any discussions with regard to the readiness and willingness on the part of the respondent/plaintiff. The delay being only 448 days and since the substantive right of the petitioners is involved, this Court is of the opinion that an opportunity can be given to the petitioners to contest the suit on merits. Further, the petitioners have also come forward to deposit Rs.10 lakhs to show their bonafide. Taking into consideration the above, this Court is inclined to set aside the order dated 01.02.2024.



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7. Accordingly, the Civil Revision Petition stands allowed and the order passed by the learned Subordinate Judge, Rasipuram, in I.A.No.4 of 2023 in O.S.No.67 of 2021 on 01.02.2024, is directed to be set aside and the delay of 448 days is condoned. The ex parte decree in O.S.No.67 of 2021 is directed to be set aside, on condition that the petitioners deposit a sum of **Rs.10,00,000/- (Rupees Ten Lakhs only)** to the credit of O.S.No.67 of 2021 on the file of the Subordinate Court, Rasipuram, **on or before 06.06.2025**. On such deposit being made, the learned Subordinate Judge, Rasipuram, take the suit on file and direct the parties to appear before the trial Court on 10.06.2025 and dispose the suit as expeditiously as possible, preferably, within a period of **six months from 10.06.2025**. It is made clear that the respondent/plaintiff shall not encumber the property till the disposal of the case.

8. Consequently, connected miscellaneous petition is closed. No costs.

21.04.2025

Note : Registry is directed to return the original papers to the counsel for the petitioners and issue order copy by **23.04.2025**.



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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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To

1. The Subordinate Court, Rasipuram.
2. The Section Officer, VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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