



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 22.10.2025

Order pronounced on : 31.10.2025

CORAM

THE HONOURABLE MR JUSTICE P.B. BALAJI

CRP.No.2542 of 2023
& CMP.No.15721 of 2023

R.Kannuchamy

... Petitioner

Vs.

R.Venugopal (Deceased)

1.Vijayalakshmi

2.Vijay Venkat

... Respondents

Prayer: Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the impugned order dated 04.01.2023 in I.A.No.1 of 2021 in O.S.No.339 of 2007 on the file of the Additional District Judge, Kancheepuram District at Chengalpattu.

For Petitioner : Mrs.Chitra Sampath
Senior Counsel
for Mrs.Inthu Karunakaran

For Respondents : Mr.V.Jayakumar



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ORDER

The plaintiff, aggrieved by the order condoning the delay of 1609 days in filing an application to set aside the judgment and decree passed ex-parte in O.S.No.339 of 2007, is the revision petitioner.

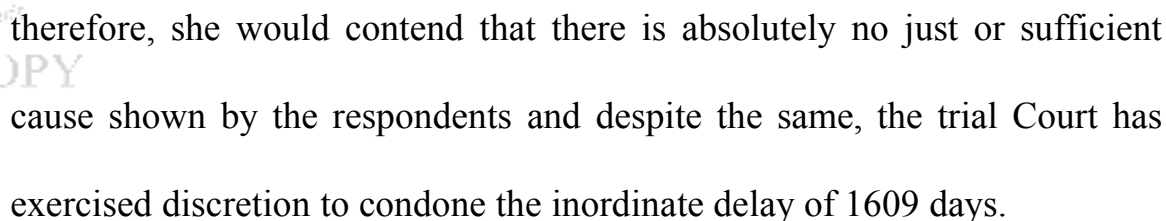
2.I have heard Mr.Chitra Sampath, learned Senior Counsel for Mrs.Inthu Karunakaran, learned counsel for the revision petitioner and Mr.V.Jayakumar, learned counsel for the respondents.

3.Mrs.Chitra Sampath, learned Senior Counsel would submit that the suit was filed for specific performance of an agreement of sale dated 28.01.2006, under which, a total consideration of Rs.17 lakhs had been agreed upon between the parties. According to the plaintiff, a sum of Rs.5 lakhs was advanced even on the date of the agreement of sale and subsequently, a further sum of Rs.2 lakhs was paid for which an endorsement was made by the defendants on the suit agreement itself. The balance amount of Rs.10 lakhs was due and payable across execution of the



sale deed. As the defendants did not come forward to comply with the terms of the agreement, the plaintiff was constrained to file the suit on 21.06.2007. The father of the respondents, who was the defendant and sole owner at that relevant point of time, filed a written statement on 29.01.2008. He disputed the sale consideration to be only Rs.17 lakhs, besides also disputing the payment of Rs.2 lakhs, which was pleaded by the plaintiff towards further advance. The suit came to be decreed on 15.06.2016, after giving several opportunities to the defendants to cross-examine the plaintiff's witness, P.W.1.

4.Mrs.Chitra Sampath, learned Senior Counsel would further state that pursuant to the decree, the balance sale consideration has been deposited even in September 2016 and after close to 2 years, an execution petition was filed in the year 2018 and the respondents have also entered appearance and filed counter in January 2020 in the execution proceedings. She would point out that even after coming to know of the ex-parte decree in the suit, the respondents chose to file the application to set aside the ex-parte decree, along with condone delay application only on 11.12.2020 and



5. Mrs. Chitra Sampath, learned Senior Counsel would invite my attention to the impugned order, where the trial Court has, after noticing that as many as 24 adjournments were given and despite the same, the respondents did not appear to cross-examine P.W.1, the trial Court has merely held that the reasons for non-appearance are reliable and acceptable in nature and that an opportunity should be given to the respondents to contest the main suit, by adducing evidence and therefore, proceeded to allow the petition on payment of cost of Rs.5,000/-. She would therefore state that the order of the trial Court is clearly perverse and there is absolutely no discussion with regard to the sufficiency of the cause shown by the respondents for condonation of huge delay of 1906 days.

6.Per contra, Mr.V.Jayakumar, learned counsel for the respondents would submit that the suit itself was contested and written statement was



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filed by the father of the respondents, wherein he has specifically pleaded that the sale consideration was Rs.31,50,000/- and not Rs.17,00,000/- as alleged by the plaintiff and that as on date, the sale deed has not been executed and therefore, he would contend that no serious prejudice has been caused to the petitioner because of the discretion exercised by the trial Court to condone the delay in favour of the respondents.

7.The learned counsel for the respondents would also rely on the decision of this Court in *M.Sakthivel and others Vs. Sankareswari*, reported in *C.R.P.(NPD)(MD)No.1263 of 2014* and judgment of the Hon'ble Supreme Court in *Rafiq and another Vs. Munshilal and another*, reported in *AIR 1981 SC 1400* and *Collector, Land Acquisition, Anantnag and another Vs. Katiji and others*, reported in *AIR 1987 SC 1353*, where the Courts have held that a liberal approach should be adopted by the Court, while enquiring into a condone delay application. He would also place reliance on the decision of the Hon'ble Supreme Court in the *Koushik Mutually Aided Cooperation Housing Society Vs. Ameena Begum and another*, reported in *SLP(C).No.5489 of 2021* dated 01.12.2023. However, I do not find how this



decision would apply to the facts of the present case, where the matter was only remitted to the High Court with a direction to the High Court to dispose of the appeal filed by the 1st respondent therein, in accordance with law and discussion revolved only around the maintainability of the revision under Section 115 of CPC or not when an application under Order IX Rule 13 of CPC had been dismissed / rejected. The Hon'ble Supreme Court did not go into the question of the explanation or sufficient cause shown for condonation of delay of 5767 days in filing the petition to set aside the ex-parte decree.

8.I have carefully considered the submissions advanced by the learned counsel on either side.

9.Admittedly, the respondents suffered a decree for specific performance and they filed an application on 11.12.2020 to set aside the ex-parte decree passed on 15.06.2016. The reasons assigned by the petitioner in their application for condonation of delay were that they were under the impression that the erstwhile counsel would be informing them about the



status of the case and he has not informed them, despite even disposal of the suit and that they came to know about the ex-parte decree only on receipt of EP notice in the month of August 2019. The said application was resisted by the revision petitioner on the ground that the respondents cannot blame their counsel and it was their duty to follow up the case and for more than 24 hearings, the trial Court had adjourned the matter only for enabling the respondents to appear and cross-examination of P.W.1 and therefore, the application to set aside the ex-parte decree was only to drag on the proceedings and trouble the plaintiff.

10.The trial Court, after setting out the rival contentions of the parties, has thought it fit to condone the delay, stating that non-appearance for cross-examination of P.W.1 was satisfactorily explained and that the explanation was reliable and acceptable in nature. Unfortunately, the trial Court has not even discussed the reasons for the delay of 1609 days in the first place. It is relevant to note that after the ex-parte decree, the petitioner filed an execution petition in E.P.No.13 of 2018 and in the said execution petition, admittedly, even according to the respondents, they received notice



in August 2019 itself. They have also entered appearance in October 2019 and they have taken time to file counter. While so, the respondents have not taken any steps to file the application to set aside the ex-parte decree until 11.12.2020.

11.If, at least, the petitioners' case that they were not informed by the advocate and they came to know only about the decree from the notice received in the EP, then when even according to the respondents, when they received the notice in the EP, even in August 2019, nothing prevented the respondents from approaching the Court immediately thereafter. The respondents have taken their own sweet time and waited for more than a year and four months to file the application in December 2020. There is absolutely no explanation for the delay in approaching the Court, after getting notice about the ex-parte decree even in as early as in August 2019. Unfortunately, without any discussion whatsoever, the trial Court has thought it fit to exercise its discretion in favour of the respondents only on the ground that the suit is one for specific performance and that the respondents have disputed even the sale consideration.



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12.The Hon'ble Supreme Court, in *Thirunagalingam Vs. Lingeswaran and another*, reported in SLP(C)No.17575 of 2023 dated 13.05.2025, held that the Court should not start with merits of the claims, but should only focus on sufficiency of cause shown for condonation of delay and the law is now fairly well settled that if the petitioner, who seeks condonation of delay, does not show sufficient cause, then the Court cannot bypass the said requirement and examining the merits of the suit claim, condone the delay.

13.Applying the ratio laid down by the Hon'ble Supreme Court in its latest judgment to the facts of the present case, I find that the respondents have miserably failed to show sufficient cause. Further, the respondents have chosen to blame their erstwhile counsel and this practice also has been deprecated by the Hon'ble Supreme Court as well as by this Court, time and again. In the light of the above, I am inclined to set aside the unreasoned order of the trial Court, condoning the delay of 1609 days in filing the application to set aside the ex-parte decree.



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14.In fine, the Civil Revision Petition is allowed. The order dated 04.01.2023 in I.A.No.1 of 2021 in O.S.No.339 of 2007 on the file of the Additional District Judge, Kancheepuram District at Chengalpattu, is set aside. There shall be no order as to costs. Connected Civil Miscellaneous Petition is closed.

31.10.2025

Neutral Citation: Yes/No
Speaking Order/Non-speaking Order
Index : Yes / No
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To

The Additional District Judge, Kancheepuram District, Chengalpattu.



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P.B. BALAJI,J.

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Pre-delivery order made in

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