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CRP NO. 4048 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **07-04-2025**

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP NO. 4048 of 2023

K.Gopinath

S/o.K.Krishnan, No.14, 15th Main, 5th Cross,
Papaia Garden B.S.K. III Stage, Bangalore-560085

..Petitioner(s)

Vs

D.Saraswathi

W/o.N.Balakrishna, 5th Cross Street, No.17/8, Sankarapuram, Basavangudi,
Bangalore District, Karnataka State

..Respondent(s)

Prayer : Civil Revision Petition filed under Section 115 of CPC against the order and decretal order dated 08.11.2022 passed by the Trial court in I.A.No.01 of 2022 in O.S.No.40 of 2016 on the file of Principal Subordinate Court, Krishnagiri.

For Petitioner(s) : Mr..C.Jagadish

For Respondent(s): M/s.C.Jayachithra For M/s.T.S.Baskaran



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ORDER

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This Revision Petition has been filed seeking to set aside the order dated 08.11.2022 in I.A.No.01 of 2022 in O.S.No.40 of 2016 on the file of Principal Subordinate Court, Krishnagiri.

2. The brief facts of the case is as follows:-

(A) The petitioner is the defendant in O.S.No.40 of 2016. Since he did not appear before the trial court, he was set exparte and the exparte decree came to be passed on 06.08.2018.

(B) The petitioner has filed an application in I.A.No.1 of 2022 seeking to set aside the exparte decree along with application under Section 5 of the Limitation Act seeking to condone the delay of 440 days in filing the petition. The trial court, finding that the petitioner/defendant has not shown any valid or bonafide reason to the satisfaction of the court to condone the delay of 440 days, dismissed the application. Against which, the present Revision Petition has been filed.

3. The learned counsel for the revision petitioner/defendant submits that the respondent is none other than the junior maternal aunt of the petitioner.



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4. The learned counsel for the petitioner made the following submissions:-

(a) Though the petitioner hails from Krishnagiri District, he was normal resident of Bangalore and no suit notice was served on him. Even as per the finding of the trial court, notice was served on the petitioner only through substituted service.

(b) The suit is for specific performance and the judgment of the trial court does not comply with the requirements of Order 20 Rule 4 and 5 of the Code of Civil Procedure. The Judgment does not contain concise statement and points for determination.

© He further submitted that the petitioner has approached the court immediately after notice was served to him in E.P., and after verifying about the exparte order and as such delay of 440 days occurred.

(d) He further submitted that admittedly the amount received by the petitioner was Rs.2,50,000/- which was towards the medical expenses to his wife and the petitioner had periodically paid the interest to the respondent who is none other than the junior maternal aunt and to show his bonafides, the petitioner is ready to deposit Rs.2,50,000/- to the credit of O.S.No.40 of 2016



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and he is ready to cooperate for the speedy disposal of the trial.

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5. Learned counsel for the respondent would submit that the trial court, rightly finding that the petitioner has not shown his bonafides and that the delay is 440 days, dismissed the petition which needs no interference and she would object for allowing the Civil Revision Petition.

6. Heard the learned counsel for the petitioner and the respondent and perused the records.

7. The delay in filing the petition to set aside the exparte decree was 440 days. A perusal of the judgment passed in O.S.No.40 of 2016 shows that it is not a judgment within the meaning of Order 20 Rule 4 and 5 of CPC. Further the delay is only 440 days, which is not excessive and the petitioner who has been served notice in E.P., has immediately approached the court. It is also stated that the sale deed has been executed in favour of the respondent. The agreement for sale is a registered agreement and the petitioner has admitted to having received Rs.2,50,000/-.



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8. Taking into consideration the above facts and that the delay is only 440 days and the judgment passed in the suit does not satisfy the requirement of Order 20 Rule 4 and 5 of CPC, this court is inclined to allow the revision.

9. Accordingly, this Civil Revision Petition is allowed. The impugned order dated 08.11.2022 passed in I.A.No.01 of 2022 in O.S.No.40 of 2016 on the file of Principal Subordinate Court, Krishnagiri, is set aside. The exparte decree in O.S.No.40 of 2016 dated 06.08.2018 is set aside and the suit shall be restored on condition that the revision petitioner/defendant deposit Rs.2,50,000/- to the credit of O.S.No.40 of 2016 on or before 03.06.2025. On such deposit, the parties shall appear before the trial court on 09.06.2025. The trial court shall take every endeavour to dispose of the suit within four months from 09.06.2025. No costs.

07-04-2025

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Note: Issue order copy on 15.04.2025.



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A.D.JAGADISH CHANDIRA, J.

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To

1. The learned Principal Subordinate Judge,
Principal Subordinate Court, Krishnagiri.

2.D.Saraswathi
W/o.N.Balakrishna, 5th Cross Street, No.17/8,
Sankarapuram, Basavangudi, Bangalore District,Karnataka

C.R.P.No.4048 of 2023

07.04.2025