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C.R.P. NO.4077 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17/12/2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P. NO.4077 OF 2022

AND

C.M.P.NO.21168 OF 2022

1.Mr.Periyasamy

2.Mr.Venkatesan
Petitioners/Petitioners/

...

Defendants

Vs.

Mr.Nehru
Respondent/Respondent/

...

Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, 1950, praying to set aside the Fair and Decretal Order dated August 18, 2022 made in I.A.No.256 of 2020 in O.S.No.4 of 2017 passed by the Additional District Munsif, Ulundurpettai, Kallakurichi.

For Petitioners : Ms.K.Varsha

For Respondent : Ms.R.Poornima



ORDER

Feeling aggrieved by the Dismissal Order dated August 18, 2022 passed in I.A.No.256 of 2020 in O.S.No.4 of 2017 on the file of 'the Additional District Munsif Court, Ulundurpettai, Kallakurichi District' (hereinafter referred to as the 'Trial Court'), the Petitioners/Defendants therein have preferred this Civil Revision Petition.

2.The Revision Petitioners herein are the Defendants and the Respondent herein is the Plaintiff in the Original Suit in O.S.No.4 of 2017. For the sake of convenience, the parties will hereinafter be referred to as per their array in the Original Suit.

3. The Plaintiff filed the aforesaid Suit for specific performance of Sale Agreement dated February 22, 2011. The sale price agreed therein was Rs.90,000/- (Rupees Ninety Thousand only). According to the Plaintiff, Rs.70,000/- (Rupees Seventy Thousand only) was paid as an advance on the date of Sale Agreement and the balance sale price of Rs.20,000/- (Rupees Twenty Thousand only) was to be paid within 24 months. According to the Plaintiff, the Plaintiff was ready and willing to perform his part of the contract within the stipulated period but the Defendants refused to come forward and execute the Sale Deed as per the



Sale Agreement. Hence, he filed the Suit for specific performance and other relief.

4.It is apposite to mention here that though the plaint was verified on December 21, 2015 and presented on the same date, the plaint was returned due to some defects. Thereafter, the plaint was re-presented along with I.A.No.811 of 2016 praying to condone the delay of 227 days in re-presenting the plaint. In the said petition, notice was ordered to the Respondents therein / Defendants and they entered appearance through an Advocate. The said petition was allowed on payment of cost. Thereafter, the Original Suit was taken on file on January 05, 2017 as O.S.No.4 of 2017 and posted on February 09, 2017 for the first hearing. On that date, Mr.A.Rajagopal, Advocate filed a memo stating that he was already on record for the Defendants. Hence, the Trial Court granted time till June 09, 2016 for the defendants to file written statement. Since the Defendants did not file written statement on that date, they were called absent and set *ex-parte* and then an *ex-parte* decree was passed on September 17, 2019 against the Defendants.

5.The Defendants filed an application to set aside the *ex-parte* decree passed against them with a delay of 244 days. The Defendants filed an affidavit wherein they have stated that the Defendants were working at



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Kamala Nagar, Bangalore and the summons were not served on them. The Defendants were unaware of the aforesaid Suit proceedings. Only upon receiving notice in the Execution Petition filed pursuant to the *ex-parte* decree, the Defendants came to know about the *ex-parte* decree passed against them. Accordingly, the Defendants prayed to condone the delay in filing the application to set aside the *ex-parte* decree.

6.The Plaintiff filed counter denying the averments made in the affidavit and stating that the Defendants continuously reside in their native village.

7.In the application filed to set aside the *ex-parte* decree, the 2nd Petitioner / 2nd Defendant was examined as P.W.-1 and one Veeran was examined as P.W.-2 to substantiate the defendants' case and the Respondent/Plaintiff did not adduce any evidence.

8.The Trial Court after hearing both sides, held that the Defendants did not approach the Court with clean hands, that the evidence of P.W.2 who is a close relative of P.W.1 did not inspire the confidence of the Court and that the reasons assigned in the affidavit are not satisfactory.

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Accordingly, the Trial Court dismissed the application.

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9. Feeling aggrieved by the Dismissal Order passed therein, the Defendants have preferred this Civil Revision Petition.

10. Ms. K. Varsha, learned Counsel appearing for the Revision Petitioners / Defendants submits that the Defendants did not receive the Suit summons and their Advocate failed to inform them about the first hearing as well as the subsequent hearing dates. The Defendants were working at Bangalore for their livelihood. The Defendants have got knowledge about the *ex-parte* decree only after receiving notice in the Execution Petition in E.P.No.32 of 2020 on the file of the Principal District Munsif, Ulundurpettai. The Defendants have a fair chance to establish their defense. She prays to allow this Civil Revision Petition and set aside the Dismissal Order passed by the Trial Court in the application filed by the Defendants under Section 5 of the Limitation Act, 1963 and allow the condonation of delay prayer made in I.A. No.256 of 2020.

11. In response to the above submissions, Ms. R. Poornima, learned Counsel appearing for the Respondent / Plaintiff contends that the Defendants did not adduce any satisfactory evidence to show that they

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were residing at Bangalore for their livelihood. Further submits that the Defendants did not explain the long delay of 244 days in filing the petition to set aside the *ex-parte* decree. The Trial Court after considering the entire facts and circumstances of the case, rightly dismissed the application refusing to condone the delay of 244 days. The Order was passed in consonance with law and there is no warrant to interfere in it. Accordingly, she prays to dismiss this Civil Revision Petition.

12.This Court has considered both sides' submissions and perused the materials placed on record.

13.This Court vide Order dated September 19, 2025 had called for a report from the Trial Court with regard to service of summons to the Defendants and appearance of the Defendants through Advocate. The Trial Court sent a report dated November 01, 2025 vide D.No.658 of 2025. Perusal of the report reveals that originally the plaint was presented on December 21, 2015 and the same was returned due to some defects. The Plaintiff re-presented the said plaint with a delay of 227 days, along with I.A.No.811 of 2016 praying to condone the delay. In the said Interlocutory Application, one Advocate by name Mr.A.Rajagopal appeared on behalf of the defendants and filed Vakalat. The said

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Interlocutory Application was allowed and the delay in re-presentation was condoned on payment of cost. Thereafter, the plaint was taken on file on January 05, 2017 as O.S.No.4 of 2017 and posted on February 09, 2017 for first hearing. On that date, Mr.A.Rajagopal filed a memo stating that he is already on record and in support, filed his Vakalat in I.A.No.811 of 2016. The Trial Court recorded the said memo and granted time till June 09, 2017 for filing written statement. The Defendants did not file the written statement by June 09, 2017 and hence, they were called absent and set *ex-parte*. Eventually, an *ex-parte* decree was passed on September 17, 2019.

14.From the report, it is clear that the Defendants entered appearance in the delay condonation application in I.A.No.811 of 2016. Admittedly, no Suit summons were served on the Defendants, in view of the Memo filed by Mr.A.Rajagopal stating he was already on record for the Defendants in I.A.No.811 of 2016 along with a copy of his Vakalat in the said Interlocutory Application.

15.It is the duty of the Counsel on record for the defendants to intimate the hearing date to the Defendants. In this case, there is no evidence available on record to show that the Counsel on record intimated



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the hearing date to the Defendants. It is stated that the Defendants went to Bangalore and worked there for their livelihood and hence, they were unaware of the Suit proceedings.

16.In view of the facts and circumstances of the case, this Court is of the view that the reasons stated in the affidavit for condoning the delay of 224 days is sufficient and satisfactory. With a view to adhere to the principles of natural justice fully, with a view to decide the matter on merits and in the interest of justice, this Court is inclined to allow this Civil Revision Petition subject to payment of cost.

17.Resultantly, this Civil Revision Petition is allowed on condition that the Revision Petitioners/Defendants shall pay a cost of Rs.10,000/- (Rupees Ten Thousand Only) to the Respondent/Plaintiff on or before January 10, 2026, failing which, this Civil Revision Petition shall stand dismissed automatically without any further reference to this Court. Consequently, connected Civil Miscellaneous Petition is closed.

18.List the matter on January 11, 2026 under the cause list caption “for Reporting Compliance”.

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Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
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To

The Additional District Munsif,
Ulundurpettai,
Kallakurichi.



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R. SAKTHIVEL, J.

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