



C.R.P.(PD) No.4588 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2025

CORAM

THE HON'BLE Mr. JUSTICE A.D.JAGADISH CHANDRA

C.R.P.(PD) No.4588 of 2023

AND

C.M.P.No.27435 of 2023

Y.Pallaku Durai (deceased)

1.P.Sujatha (Ex-director)

2.Y.P.Shiravan (Ex-director)

.. Petitioners

Vs.

1.Sujath Agencies

Rep. by Proprietor R.Sujatha

Having office at No.60, New No.82, Collectorate Colony

Aminjikarai, Chennai 600 029

2.M/s.Saravana Stores Gold Palace Pvt. Ltd. (in liquidation)

No.2, Rajiv Gandhi Salai (OMR)

Sholinganallur, Chennai 119

.. Respondents

Civil Revision Petition filed under Section 115 CPC against the fair and decretal order dated 21.09.2023 made in I.A.No.3 of 2023 in O.S.No.3480 of 2021 on the file of the XXIII Assistant City Civil Court, Chennai.

For Petitioners : Mr.N.V.Prakash

For 1st Respondent : Mr.M.Guruprasad

ORDER

This revision petition has been filed seeking to set aside the order dated 21.09.2023 passed by the learned XXIII Assistant Judge, City Civil Court, Chennai, in I.A.No.3 of 2023 in O.S.No.3480 of 2021, dismissing the petition



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filed under Section 5 of the Limitation Act r/w Section 151 CPC seeking to condone the delay of 557 days in filing the petition to set aside the *ex parte* judgment and decree dated 17.11.2011.

2. Brief facts of the case :

2.1. The revision petitioners are the defendants 3 and 4 in O.S.No.3480 of 2021 filed by the 1st respondent/plaintiff for recovery of a sum of Rs.4,66,459/-, in respect of the goods supplied to the 2nd respondent/ 1st defendant firm.

2.2. It is the case of the revision petitioners that the 2nd defendant, who was the Managing Director of the 2nd respondent/1st defendant firm, was taking care of the said case and during the pendency of the suit, he died on 11.07.2021.

2.3. It is the further case of the revision petitioners that the 1st revision petitioner is the wife of the 2nd defendant and she is a homemaker and the 2nd revision petitioner is the 2nd defendant's son, who was aged only 22 years at that time and hence, they were not aware of the pendency of the suit and only after they received the notice in the execution petition proceedings, they came to know about the *ex parte* judgment and decree and immediately, they have filed a petition seeking to set aside the *ex parte* judgment and decree with a delay of 557 days.



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2.4. It is also the case of the revision petitioners that the 2nd defendant was managing the affairs of the 2nd respondent firm and after his death, the business also come to a standstill and it is under liquidation.

2.5. The 1st respondent/plaintiff has filed a counter affidavit stating that the revision petitioners were aware of the pendency of the suit and they willfully evaded to appear before the trial Court.

2.6. The trial Court finding that the revision petitioners have not shown sufficient cause, dismissed the petition, against which, the present civil revision petition has been filed.

3. The learned counsel appearing for the revision petitioners submitted that the 1st revision petitioner's husband viz., the 2nd defendant was managing the 2nd respondent firm during his lifetime and at the time of the death of the 2nd defendant, the 1st revision petitioner was a homemaker and the 2nd revision petitioner was aged about 24 years and hence, they were unaware of the pendency of the suit. The learned counsel further submitted that if the revision petition is not allowed and the revision petitioners were not granted the opportunity to contest the suit, they would be put of great hardship.

4. *Per contra*, the learned counsel appearing for the 1st respondent/plaintiff submitted that the revision petitioners have not shown any sufficient



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cause to condone the delay of 557 days and hence, he objected to condone the delay in filing the petition to set aside the *ex parte* judgment and decree dated 17.11.2021.

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

6. It is the case of the revision petitioners that they are wife and son of the deceased 2nd defendant and the 2nd defendant who was managing the affairs of the 2nd respondent firm died on 11.07.2021 and thereafter, the suit came to be decreed on 17.11.2021 and they came to know about the *ex parte* judgment and decree only after the receipt of notice in the Execution Petition and they have immediately approached the trial Court, however there had been a delay of 557 days.

7. The petitioners are the wife and son of the 2nd defendant who is the Managing Partner of the 1st defendant firm and the 2nd defendant who was pursuing the case had passed away and thereby, the petitioners were not aware of them being set *ex parte*. Though the revision petitioners have shown sufficient cause for not approaching the trial Court within the time, the trial Court had dismissed the petition.



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8. This Court is of the opinion that in order to render substantive justice, one opportunity can be given to the petitioners to contest the case on merits while suitably compensating the 1st respondent for the inconvenience caused to her and thereby, this Court is inclined to allow this revision petition on condition that the revision petitioners pay a sum of Rs.10,000/- (Rupees Ten Thousand only) to the 1st respondent as cost, within a period of two weeks from the date of receipt of a copy of this order.

9. In the event of the 1st respondent refusing to accept the cost, the petitioners shall deposit the same before the trial Court and the trial Court shall disburse the same to the 1st respondent. The revision petitioners shall co-operate for the speedy disposal of the trial.

With the above direction, this civil revision petition is allowed.
Connected C.M.P. is closed.

05.02.2025

Index : Yes/No Neutral Citation : Yes/No
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A.D.JAGADISH CHANDRA, J.

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