



CRP.No.4058 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.4058 of 2023

and

C.M.P.No.24801 of 2023

S.Nagarajan
Rep by Power Agent
Sekar

.. Petitioner

Versus

M.Gunaseelan

.. Respondent

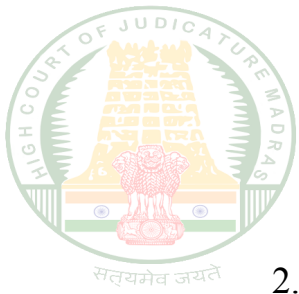
Prayer:- Civil Revision Petition filed under Section Article 227 of the Constitution of India, , to set aside the fair and decretal order dated 01.08.2022 in I.A.No.365 of 2015 in O.S.No.38 of 2006 on the file of the Principal Sub-Court, Dharmapuri.

For Petitioner : Mr.V.Srimathi

For Respondent : Mr.P.Valliappan, Senior Counsel
for M/s.P.V.Law Associates

ORDER

Challenging the order of the Trial Court dismissing the application to condone the delay of 731 days in filing the petition to set aside the exparte decree dated 28.02.2013, the present revision has been filed.

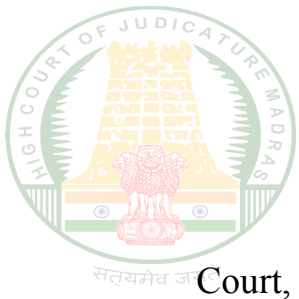


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2.a. Originally, the respondent/plaintiff filed a suit in O.S.No.38 of 2006 on the file of the Subordinate Court, Dharmapuri as against the petitioner/defendant and for the relief of specific performance. The suit was decreed exparte on 10.11.2010. The petitioner filed an application in I.A.No.153 of 2012 to set aside the exparte decree and the same was allowed. However, again the defendant was once again set exparte and the exparte decree was passed on 28.02.2013. In the meanwhile, the respondent filed EP.No.53 of 2013 and the sale deed was executed in favour of the respondent vide order dated 23.09.2014 and thereafter, filed application for delivery of possession in REP.No.62 of 2014. On 16.04.2015, the petitioner had filed an application in I.A.No.365 of 2015 seeking to condone the delay of 731 days in filing the application to set aside the exparte decree dated 28.02.2013 which was allowed by the Trial Court vide non-speaking order dated 21.12.2015. Challenging the same, the respondent/plaintiff had filed a revision before this Court in CRP.No.328 of 2016.

2.b. This Court vide order dated 02.03.2018 allowed the revision and set aside the order of the Trial Court and remanded the matter to the Sub



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Court, Dharmapuri for fresh consideration. The Trial Court took up the application in I.A.No.365 of 2015 filed by the petitioner to condone the delay of 731 days in filing petition to set aside the exparte decree dated 28.02.2013. The only reason assigned by the petitioner to condone the delay is that the petitioner herein is the power agent of his son Nagarajan/Defendant. The defendant had gone to abroad and they were not aware of the exparte decree. The Trial Court vide the impugned order dated 01.08.2022 dismissed the application, challenging the same, the present revision.

3. The learned counsel for the petitioner submitted that the defendant is represented through his power of attorney/his father, the defendant went to abroad and they do not know about the exparte decree. Hence, seeks for liberal approach.

4. On the other hand, the learned senior counsel for the respondent that petitioner has not shown sufficient cause in condoning each days delay. The learned senior counsel placed reliance on the judgment of the Hon'ble Supreme Court in *Majji Sannemma v. Reddy Sridevi and others* reported



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in **AIR 2022 SC 332**, wherein, the Hon'ble Supreme Court has held that when no explanation much less a sufficient or a satisfactory explanation has been offered by the appellants therein, the High Court is not at all justified in exercising its discretion to condone such a huge delay. Hence, the learned senior counsel opposed the revision.

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

6. The Court, in exercising discretion, particularly in these types of petitions, has to see the conduct, behaviour and attitude of a party relating to its inaction or negligence. The above factors are relevant to be taken into consideration as the fundamental principle is that Courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go-by in the name of liberal approach. There is an increasing tendency to perceive delay even in a non-serious matter. Hence, the delay due to nonchalant attitude should be curbed at the initial stage itself. The petitioner was originally set exparte vide exparte decree dated 10.11.2010, thereafter, on application, the Trial Court allowed the application to set aside the exparte decree and the suit was restored

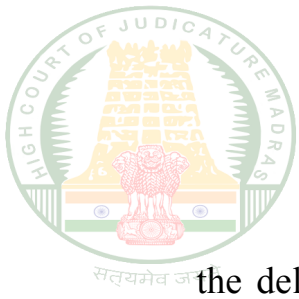


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vide order dated 28.09.2012. Even thereafter, once again the petitioner was set exparte vide decree and judgment dated 28.02.2013.

7. Further, it is also brought to the notice of this Court that the respondent/plaintiff in a similar suit in respect of the similar relief of specific performance against the petitioner/defendant, wherein, in that suit also, the defendant was originally set exparte and application to set aside the same was allowed and thereafter, once again was set exparte vide decree dated 28.02.2013 and had taken up an application in I.A.No.363 of 2015 to condone the delay of 731 days in filing the petition to set aside the exparte decree and the same was dismissed vide order dated 21.04.2021. Against which revision was filed before this Court in CRP.No.4641 of 2015. This Court vide detailed order dated 21.04.2021 disbelieved the contention of the petitioner/defendant and has held that defendant had been delaying the process of trial and the conduct of the petitioner does not seems to be bonafide. Against the order of this Court, Special Leave Petition was also filed in SLPNo.14370 of 2021 before the Hon'ble Supreme Court and the appeal was also dismissed vide order dated 20.09.2021. In the said application also same reasons assigned to condone



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the delay of 731 days in filing the application. Reason assigned was not believed by this Court, Special Leave Petition filed in this regard also dismissed. Therefore, in the connected suit, same reasons cannot be accepted.

8. It is relevant to note that the Hon'ble Supreme Court in the case of *Sridevi Datla vs. Union of India and others* reported in (2021) 5 SCC 321 held as follows:

“ 28. It is evident that the term sufficient cause is relative, fact dependent, and has many hues, largely deriving colour from the facts of each case, and the behaviour of the litigant who seeks condonation of delay (in approaching the court). However, what can broadly be said to be universally accepted is that in principle, the applicant must display bona fides, should not have been negligent, and the delay occasioned should not be such that condoning it would seriously prejudice the other party.”

9. When there is 'no cause' for the delay, it cannot be treated as 'sufficient case'. This Court is of the view that the petitioner ought to have been vigilant in pursuing the litigation and the callous attitude of the petitioner cannot be brushed aside while deciding an application under Section 5 of the Limitation Act. Therefore, once the delay has not been explained and no documents are produced to substantiate the cause of



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delay, as a matter of right, the petitioner should not be shown any liberal approach. This Court is of the definite view that the delay cannot be condoned on insufficient grounds and by abusing the process of law.

10. The conduct of the petitioner does not seem to be bonafide. The delay is an inordinate delay and no proper explanation had been given by the petitioner for condonation of such delay and thereby, the Trial Court rightly finding that the petitioner had not shown sufficient cause had dismissed the petition seeking to condone the delay of 731 days. This Court is of the considered opinion that there is no infirmity in the order passed by the trial Court.

11. Accordingly, this Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

23.06.2025

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Internet : Yes

Index : Yes/No

Speaking order / Nonspeaking order

Neutral Citation : Yes/No



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N. SATHISH KUMAR, J.

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To

1. The Sub Judge
Sub Court, Dharmapuri

4. The Section Officer
VR Section, Madras High Court

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