



C.R.P.Nos.581 & 582 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.Nos.581 & 582 of 2024

P.Elumalai

... Petitioner
in both revision petitions

Vs.

P.Mathi

... Respondent
in both revision petitions

Prayer in C.R.P.No.581 of 2024 : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 07.09.2023 in I.A.Nos.143 of 2023 in O.S.No.54 of 2017 on the file of the Sub-Court at Gingee, Thiruvannamalai.

Prayer in C.R.P.No.582 of 2024 : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure against the order dated 07.09.2023 in I.A.Nos.144 of 2023 in O.S.No.54 of 2017 on the file of the Sub-Court at Gingee, Thiruvannamalai.

For Petitioner : Mr.K.Thenrajan
in both petitions

For Respondent : No appearance
in both petitions

COMMON ORDER



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Challenging the common order of the Sub-Court at Gingee, Thiruvannamalai, dated 07.09.2023, in I.A.Nos.143 and 144 of 2023 in O.S.No.54 of 2017, allowing the applications to condone the delay of 1190 days in filing the application to set aside the *ex parte* decree, and the application to set aside the *ex parte* decree, with cost of Rs.3,000/-, the present revision petitions have been filed.

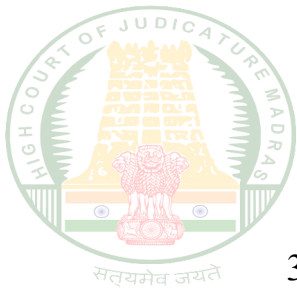
2.Brief background of the case is as follows :

The suit was originally filed by the revision petitioner for specific performance on the basis of the sale agreement dated 20.01.2015. The sale agreement is entered into for sale of subject property for a total sale consideration of Rs.1,20,000/-. On the date of agreement itself, a sum of Rs.90,000/- is said to have been paid and for payment of the remaining sale consideration, time is fixed as three years. Thereafter, it is the contention of the revision petitioner that, as the respondent has not come forward to execute the sale deed, he issued a legal notice and thereafter filed the suit for specific performance in O.S.No.54 of 2017. Originally, the suit was decreed *ex parte* only for alternative relief of refund of advance on



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15.11.2017 and thereafter, an appeal was filed by the plaintiff in A.S.No.2 of 2018 and the Appellate Court, by its judgment dated 05.03.2019, set aside the judgment and decree of the trial Court and remanded the matter back to the trial Court with a direction to dispose of the suit within a period of six months. While remanding the matter, the Appellate Court also directed the parties to appear before the trial Court on 22.03.2019. Thereafter, when the matter was taken afresh by the trial Court on 22.03.2019, the respondent/defendant has not appeared before the trial Court. Thereafter, fresh summons have been ordered to the respondent. However, it appears that summons have not been served and the defendant was set *ex parte* on 11.04.2019 and the suit was decreed *ex parte* on 17.09.2019. Thereafter, the revision petitioner has filed Execution Petition in E.P.No.97 of 2021 and in the Execution Petition also, the respondent has appeared and took time for filing counter. Thereafter, the respondent has filed the present applications to set aside the *ex parte* decree along with condone delay application.



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3.The said applications were opposed by the revision petitioner on the ground that, even after entering appearance in the Execution Petition, after six months, the respondent has filed the present applications to set aside the *ex parte* decree. However, the trial Court, taking note of the factual aspects that, after the matter has been remanded, despite the matter has been adjourned for serving summons, as the summons have not been served on the respondent, exercised its discretion and allowed the application to condone the delay and also the application to set aside the *ex parte* decree. While allowing the applications, the trial Court also took note of the Covid-19 intervention and excluded the period of exemption as ordered by the Apex Court and found that the actual delay was only 504 days. Challenging the order allowing the applications, the present revision petitions have been filed.

4.The main contention of the learned counsel for the petitioner is that, in the appeal, the respondent appeared and she was aware of the hearing date fixed by the Appellate Court. Despite specific date has been fixed by the Appellate Court to appear on 22.03.2019, she did not appear. Thereafter in Execution Court also, after appearance, the respondent has not filed



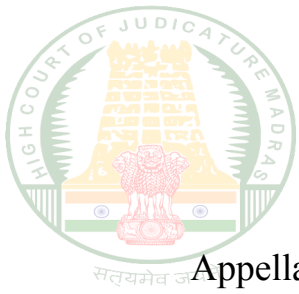
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counter immediately and she delayed the matter for six months. Thereafter, the present applications have been filed belatedly. According to him, no sufficient cause has been shown by the respondent for the delay and the trial Court has exercised its discretion without any basis for such leniency.

5.I have perused the entire materials available on record.

6.Though the delay was projected as if it is 1190 days, the trial Court has rightly found that, after the intervention of Covid-19, the delay was only 504 days. The trial Court has also found that, after the matter was remanded from the Appellate Court, though summons were ordered to the respondent, summons have not been served. Before the summons were served, the respondent has been set *ex parte*, that too, before the period fixed by the Appellate Court to dispose of the suit. The trial Court has also considered the fact that, though the respondent has taken time in Execution Petition, the same cannot be a ground to deny the substantive right and therefore, allowed the application.

7.Taking note of the facts, this Court is of the view that, though the

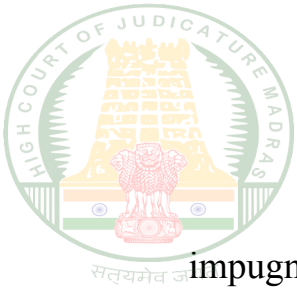


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Appellate Court has fixed the date for appearance of the parties, it is our common knowledge that, unless the counsel appearing for the litigant in Appellate Court informs the parties, they may not know the actual date for appearance before the trial Court when the matter is remanded. Therefore, the trial Court, having ordered fresh summons, has not waited till service of summons. Without service of summons, the respondent was set *ex parte* and *ex parte* decree was passed. Though there was some delay in execution proceedings and the respondent has not appeared immediately to set aside *ex parte* decree, taking note of the place from which the parties come from, such negligence is bound to happen. Since summons have not been served, one more opportunity should be given to the party to contest the suit on merits, since every adjudication should reach finality only on the basis of proper adjudication and on merits and one cannot be allowed to take advantage of the *ex parte* decree. In such view of the matter, the order of the trial Court exercising discretion to condone the delay, in the view of this Court, does not require interference.

8. Accordingly, these Civil Revision Petitions are dismissed and the



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impugned common order passed by the trial Court is confirmed. The trial Court shall dispose of the suit within a period of four months from the date of receipt of a copy of the order. No costs.

11.06.2025

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

Neutral Citation : Yes / No

To

The Sub-Judge,
Gingee, Thiruvannamalai.

N. SATHISH KUMAR, J.

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