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C.R.P.(NPD) No.4745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 10.01.2025

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THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.4745 of 2024
and C.M.P.No.26528 of 2024

1. Mrs.A.Santhana Lakshmi
2. Mr.A.Manoharan

... Petitioners/Petitioners/D1 & D2

-VS-

1. Mrs.Vijaya Kumari
2. Mr.Vinayagam

... Respondents/Respondents/Plaintiffs

3. The Sub-Registrar,
Avadi Sub-Registration Office,
Avadi, Chennai-600 054.

4. The District Collector,
Having Office at Thiruvallur,
Thiruvallur District.

... Respondents/Respondents/D3 & D4

Prayer: Civil Revision Petition filed under Section 115 of CPC to set aside the order dated 05.08.2024 passed in I.A.No.2 of 2023 in O.S.No.53 of 2011 on the file of the Subordinate Judge at Poonamallee.

For Petitioner	: Mr.W.M.Abdul Azeez
For R1	: Mr.B.Harikrishnan
For R2	: Service Awaited
For R3 & R4	: Mr.D.Gopal
	Govt. Advocate

ORDER



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A challenge has been made to the impugned order dated 05.08.2024 of the Trial Court, rejecting the application to condone the delay of 408 days in filing application to set aside the ex parte decree.

2. The respondents 1 and 2 filed a suit for declaration, declaring the cancellation of the General Power of Attorney as null and void and permanent injunction and also for recovery of possession.

3. According to the plaintiffs, the 1st defendant had executed an agreement to sell the property and executed a Power of Attorney. Though the entire sale consideration of Rs.7,00,000/- had been paid, the document has not been registered and for that purpose, the General Power of Attorney had been executed. When the matter stood thus, the Power of Attorney has been cancelled and a suit has been filed. A plea had been taken that the amount had been received as only a loan transaction.

4. When the matter had been posted for cross examination of P.W.1, the defendants had been set ex parte on 07.08.2019 and an ex parte decree has been passed on 18.03.2020 just before the National Lockdown.



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An application has been taken out to condone the delay mainly on the ground that due to lockdown, age factor and illeness, the defendants could not contact their Advocates to give instructions. However, the Trial Court has dismissed the application on the ground of non-justification of the reason for the delay.

5. Learned counsel for the respondents contended that each day delay has not been property explained.

6. I have perused the material documents available on record.

7. Insofar as condonation of delay is concerned, it is a well settled law that if the party has shown sufficient cause for non prosecuting the case before the Court of Law, irrespective of the length of the delay, the Court can lean in favour of the party for advancement of the substantial justice, as otherwise, no leniency can be shown to the party merely for the sake of condoning the delay in the guise of extending liberal approach, even if the delay is very meagre. Secondly, while considering the application to



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set aside the ex parte order or to condone the delay, the Court must take into account of the overall conduct of the parties to the *lis* and the nature of the *lis*.

8. Admittedly, the ex parte decree has been passed just prior to imposition of the lockdown and thereafter, the application has been taken out to condone the delay of 408 days on 11.04.2023. The period during lockdown should be excluded for limitation aspect and the reason assigned is that due to age factor, they could not given proper instructions. The Covid pandemic shook the entire world and brought each Country to a standstill and at that stage, one cannot expect the parties to move an application in time. This Court is of the view that a litigation should be based on adjudication on the merits of the contentions of the parties and it cannot be terminated by default, either of the plaintiff or the defendant. The rights of the parties cannot be curtailed merely on the basis of some fault or negligence on the parties. Considering the fact that in order to give one more opportunity to the parties, the order of the Trial Court is liable to be set aside, subject to payment of cost to the plaintiffs.

9. Accordingly, this Civil Revision Petition is allowed and the



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delay is condoned on payment of costs of Rs.10,000/-. The order dated 05.08.2024 passed in I.A.No.2 of 2023 in O.S.No.53 of 2011 by the Subordinate Judge, Poonamallee is hereby quashed. The costs shall be directly paid to the plaintiffs within one month from today and in the event of refusal by the plaintiffs to receive the costs, the same shall deposited before the Trial Court and on such deposit, the Trial Court shall permit the plaintiffs to withdraw the same. Considering the fact that the application had been filed under Order 9 Rule 13 of CPC, the Trial Court shall take into account the nature of the suit and documents in favour of the revision petitioners and thereafter proceed with the suit and dispose of the same on its own merits within a period of four months from the date of receipt of a copy of this order, if the application under Order 9 Rule 13 of CPC is taken on file. Consequently, connected Miscellaneous Petition is closed.

10.01.2025

Index: Yes / No
Internet: Yes / No
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N.SATHISH KUMAR,J.,



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To:
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The Subordinate Judge,
Poonamallee

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