



C.R.P(NPD)(MD)No.228 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.228 of 2021
and C.M.P.(MD)No.1377 of 2021

1.P.Palanichamy

2.P.Panjavarnam

P.Masilamani (Died)

P.Dhanuskodi (Died)

3.M.Muthulakshmi

4.M.Manimaran

5.M.Thenmozhi

6.M.Meenadevi

7.M.Premanand

8.D.Dhanalakshmi

9.M.Senthilmurugan

10.M.Sridevi

11.M.Kirubakaran

12.D.Dhavamani

13.D.Hariharan

14.D.Gopinath

15.D.Meena

16.Aruna

... Petitioners

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Vs

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- 1.Suseela @ Marudhai
- 2.Thirumagal @ Meenal
- 3.Mahalakshmi
- 4.Savithiri @ Balasaraswathi
- 5.Madavan @ Madavarajan
- 6.Kalaiyar Servai

(Notice to R6 is dispensed with vide order dated 12.12.2024 made in C.R.P.(MD)No. 228/2021)

... Respondents

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., against the fair and decreetal order dated 05.03.2020 passed in I.A.No.650 of 2019 in O.S.No.228 of 2008 on the file of Subordinate Court, Melur.

For Petitioners : Mr.M.Kannan

For Respondents : Mr.N.Vallinayagam for R1 to T5
Dispensed with for R6

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 05.03.2020 passed in I.A.No.650 of 2019 in O.S.No.228 of 2008 on the file of Subordinate Court, Melur.

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2. The facts in short. Two other Civil Revision Petitions in CRP(MD)No.2400 of 2017 and CRP(MD)No.546 of 2018 were preferred by the revision petitioners before this Court. The first CRP was against the judgment and decree passed in O.S.No.228 of 2008 dated 22.07.2016. Second CRP was filed against the order passed in I.A.No.375 of 2015, filed under Order 7 Rule 11 of CPC. Both the CRPs were disposed by this Court by a common order dated 19.07.2018. While disposing CRPs, liberty was granted to the revision petitioner to file appropriate application under Order 9 Rule 13 C.P.C. Eventhough, the order copies were delivered on 07.09.2018, the revision petitioner filed a petition in I.A.No.650 of 2019 under Section 5 of the Limitation Act to condone the delay of 875 days in filing the petition to set aside the ex parte decree. By the impugned order, the trial Court dismissed the petition stating that no proper reason is assigned even the reason assigned was not acceptable. Against which this Civil Revision Petition is preferred.

3. Heard both sides.

4. The revision petitioner has not claimed benefits under Section 14 of the limitation Act. In the affidavit filed in support of this petition,

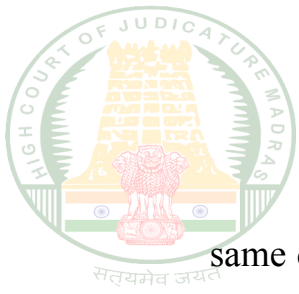


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he has mentioned about the dismissal order passed in CRP(MD)No.2400 of 2017. That application was dismissed on 19.07.2018. By treating the ex parte decree, passed on 22.07.2016, they wanted to set aside the same by condoning the delay.

5. The respondent has relied upon judgments of the Hon'ble Supreme Court of India in the case of ***Desh Raj Vs Balkishan (D) through proposed LR, Ms.Rohini*** reported in ***2020(1) CTC 586*** and a judgment of this Court in the case of ***M.Duraisamy Vs Vasantha and another*** reported in ***2023 (1) CTC 444***. For the purpose of argument that in respect of the petitions, seeking condonation of delay, eventhough it lies within the discretionary power of the Court it must be properly exercised. Here, the delay mentioned by the revision petitioner is not only huge but the reasons are also not proper.

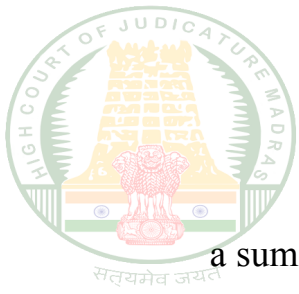
6. The order passed by this Court in CRP(MD)No.2400 of 2017 and 546 of 2018 shows that liberty was granted to the revision petitioner to approach the trial Court by way of proper application to set aside the ex party decree. CRP(MD)No.546 of 2018 was also disposed on the very



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same date on the ground that already an application has been filed by the revision petitioner under Order 9 Rule 13 CPC to set aside the ex parte decree. But in fact, that application has been filed only subsequent to that order. Similarly, CRP(MD)No.2400 of 2017 was also dismissed on the very same date stating that alternative remedy is available to the revision petitioner. So the period spent by the revision petitioner in prosecuting the above said Civil Revision Petitions have to be deducted under Section 14 of the Limitation Act. So without taking note of the above said developments it appears that the order of dismissal was passed by the trial Court stating that the delay is huge. But as mentioned above, the petitioner bonafidely prosecuted the revision petition. So that cannot be considered to be lethargic or wanton. So the period spent in prosecuting the revision petition has to be deducted and this revision petition is liable to be allowed.

7. On the sole ground, this Court inclined to allow this Civil Revision Petition, but for the reasons stated above, the inconvenience caused to the respondent can be compensated by way of cost. Therefore, by the order dated 12.12.2024, the revision petitioner was directed to pay



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a sum of Rs.5,000/- to the respondent who are available before the Court.

That order was also complied.

8. In view of the compliance, the order dated 05.03.2020 passed in I.A.No.650 of 2019 in O.S.No.228 of 2008 on the file of Subordinate Court, Melur, is set aside. This Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

10.01.2025

NCC :Yes/No

Index :Yes/No

Internet : Yes/ No

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To

1.The Subordinate Court, Melur.

2.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.

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G.ILANGO VAN, J.

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