

C.R.P.(PD)(MD)No.334 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.334 of 2022

and

C.M.P.(MD)No.1445 of 2022

Umashankar

... Petitioner/Petitioner/
3rd Defendant

Vs.

Kamalakaran

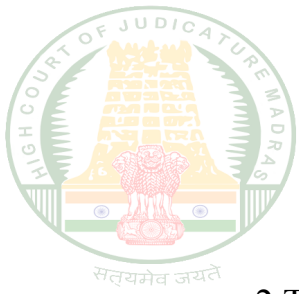
... Respondent/
Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decreetal order dated 10.11.2021 in I.A.No. 211 of 2017 in O.S.No.151 of 2008 on the file of the III Additional District Court, Tiruchirappalli.

For Petitioners : Mr.K.Prabhakar
For Respondent : No Appearance

ORDER

This Civil Revision Petition is filed challenging the fair and decreetal order dated 10.11.2021 in I.A.No.211 of 2017 in O.S.No.151 of 2008 on the file of III Additional District Court, Tiruchirappalli.



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2.The petitioner is the third defendant in the suit in O.S.No.151 of 2008 on the file of III Additional District Court, Tiruchirappalli for recovery of money. Initially, the respondent filed an indigent original petition in O.P.No.21 of 2001 on the file of I Additional Sub Court, Tiruchirappalli. The said petition was allowed and the suit was taken on file in O.S.No.151 of 2008. However, at the time of allowing the indigent petition, no notice was sent to the petitioner. Thereafter, the suit was decreed *ex-parte* on 14.02.2012. After receiving notice in the execution petition, the petitioner came to know about the *ex-parte* decree passed as against her. Immediately, the petitioner filed the set aside the application with the delay of 1573 days. The said petition was dismissed on the ground that petitioner was properly served with notice and the Court Amin was examined in this regard as R.W.2, who had deposed before the trial Court that summon was affixed in the door of the petitioner since the petitioner was not available in his residence. Challenging the same, the petitioner has filed this Civil Revision Petition.

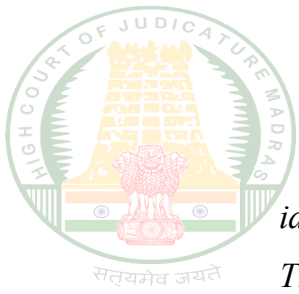
3.The learned counsel for the petitioner submits that only summons was affixed on the door of the petitioner and the same is not sufficient. Affixing entire plaint on the door along with the summons is the valid service. Apart from that under Order V Rule 17 of CPC, the Court the service officer has to



conduct enquiry among the persons residing in the locality of the petitioner about the permanent residence of the petitioner, when the serving officer, after using all due and reasonable diligence cannot find the defendant, who is absent from his residence at the time when service is sought to be effected on her at her residence. After ascertaining that the petitioner is not available in the residence permanently, the Amin has to affix the summons along with the entire plaint on the petitioner's door. However, the Court Amin has only affixed the summons in the door of the petitioner and the same is not a valid service. Hence, the order passed by the trial Court based on such invalid service is not sustainable. Hence, he prayed for appropriate orders.

4.In support of his contention, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in ***Sushil Kumar Sabharwal vs. Gurpreet Singh and others [(2002) 5 SCC 377]***, wherein it has been held as follows:-

“We find several infirmities and lapses on the part of the process server. Firstly, on the alleged refusal by the defendant either he did not affix a copy of the summons and the plaint on the wall of the shop or if he claims to have done so, then the endorsement made by him on the back of the summons does not support him, rather contradicts him. Secondly, the tendering of the summons, its refusal and affixation of the summons and copy of the plaint on the wall should have been witnessed by persons who



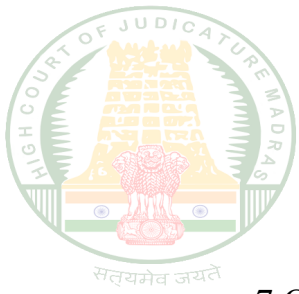
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identified the defendant and his shop and witnessed such procedure.

The endorsement shows that there were no witnesses available on the spot. The correctness of such endorsement is difficult to believe even prima facie. The tenant runs a shoe shop in the suit premises. Apparently, the shop will be situated in a locality where there are other shops and houses. One can understand refusal by unwilling persons requested by the process wherever to witness the proceedings and be a party to the procedure of the service of summons but to say that there were no witnesses available on the spot is a statement which can be accepted only with a pinch of salt. Incidentally, we may state that though the date of appearance was 23rd February, 1993 the summons is said to have been tendered on 22nd February, 1993, i.e., just a day before the date of hearing.”

5. Though notice has been served on the respondent and the name of respondent is printed in the cause list, none appeared on his behalf either in person or through counsel. However, considering the pendency of this petition, this Court is inclined to dispose of this petition based on the available records.

6. The facts in the present case are not in dispute. Admittedly, the application filed by the petitioner to set aside the *ex-parte* decree made against him in a suit filed by the respondent for recovery of money, was dismissed. The petitioner submits that no proper notice was served on her before the passing the *ex-parte* decree.



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7. Order V Rule 2 of CPC provides that every summons shall be accompanied by a copy of the plaint or, if so permitted, by a concise statement. Therefore, along with the summons, a copy of the plaint should be served, as it is very much essential because the purpose of service of a copy of the plaint or, if so permitted, of a concise statement thereof, is to bring home to the defendant, the knowledge of a particular suit having been instituted against him/her so that the defendant may know that the claim brought about the plaintiff against him/her and make up the mind against the claim. If the summons are not accompanied by a copy of the plaint, it cannot be said that there is due or valid service on the defendant and if there is no valid service, a decree on such defendant has to be set aside.

8. In the present case, it is clear from the records that no copy of petition/plaint was sent to the petitioner along with the summons. Therefore, the order passed by the trial Court has to be necessarily set aside on the ground that the petitioner was not properly served before the passing the ex parte decree.

9. Accordingly, the order passed in I.A.No.211 of 2017 dated 10.11.2021 is hereby set aside and this Civil Revision Petition is allowed. The trial Court is



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directed to take up the application seeking restoration of the suit on file and dispose of the same on merits in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

24.07.2025

Index : Yes/No
Internet : Yes / No
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To

- 1.The III Additional District Court, Tiruchirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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