



C.R.P.(NPD)(MD).No.779 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(NPD)(MD)No.779 of 2025

and

C.M.P.(MD)Nos.4169 and 12713 of 2025

1.Pathipooranam

2.Selvajothy

3.Thangam

... Petitioners

Vs.

Brightas

... Respondent

PRAYER: Civil Revision Petition - filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order in I.A.No.6 of 2024 in G.W.O.P.No.149 of 2020 dated 05.02.2025 on the file of the Family Court, Thoothukudi by allowing the present Civil Revision Petition.

For Petitioners : Mr.R.Ponkarthikeyan

For Respondent : Ms.P.Jessi Jeevapriya



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ORDER

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This Civil Revision Petition is filed challenging the order in I.A.No.6 of 2024 in G.W.O.P.No.149 of 2020 dated 05.02.2025 on the file of the Family Court, Thoothukudi.

2.The respondent herein has filed G.W.O.P.No.149 of 2020 seeking custody of his minor children. The respondent married with the petitioners's sister, namely Johnsi Rani. Out of the wedlock, they blessed with three children. Subsequently, the petitioner's sister passed away. From the childhood, the children of the petitioners' sister are with the care and custody of the petitioners and at the distant point of time, the respondent filed the present petition as against the petitioners and obtained an *ex-parte* order. Immediately after coming to know about the *ex-parte* decree, the petitioners filed an interlocutory application for condoning the delay of 138 days in filing an application to set aside the *ex-parte* decree in I.A.No.6 of 2024. The said petition was dismissed. Challenging the same, the petitioners have filed the present petition.



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3.The learned counsel for the petitioner submitted that the petitioners are none other than the sisters of the deceased wife of the respondent and the children were born out of the wedlock between the sister of the petitioners and the respondent. From the tender age, the children are under the care and custody of the petitioners and at this distant point of time, handing over the children to the respondent, will cause disturbance to the education as well as the other future interests of the children. Thereby, the petitioners filed an application to set aside the *ex-parte* order passed by the trial Court. The delay is only 139 days and the said delay is also properly explained. Even then, the trial Court has dismissed the application of the petitioners and the same is not sustainable. Accordingly, he prayed for orders.

4.The learned counsel for the respondent vehemently contended that the reasons for delay is not properly explained. Thereby, the trial Court dismissed the petition and the same needs no interference.

5.Considered the rival submissions made on either side and perused the materials placed on record.



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6.The facts in the present case are not in dispute. The petitioners are the sisters of the respondent's deceased wife. The children of the respondent are under the care and custody of the petitioners from the date of death of the respondent's wife and from their very tender age. Now handing over the children to the respondent will definitely disturb the education as well as other interests of the children.

7.Though this Court in catena of judgments held that the delay petitions are to be viewed leniently, the trial Court dismissed the application filed by the petitioners to condone the delay of 138 days in filing an application to set aside the *ex-parte* order passed as against them and the said order warrants interference.

8.Accordingly, the order passed by the trial Court in I.A.No.6 of 2024 is set aside and this Civil Revision Petition is allowed. The trial Court is directed to set aside the *ex-parte* decree in G.W.O.P.No.149 of 2020 and restore the said petition on file and dispose of the same after providing proper opportunity to the petitioners as expeditiously as possible.



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9.However, this court, in order to strike the right balance, is inclined to grant visitation rights to the respondent to visit his children in their respective residence and he is also free to hand over the things or money or whatever he wishes to give his children, to his children. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2025

NCC : Yes/No
Index : Yes/No
Internet : Yes / No
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To

- 1.The Family Court, Thoothukudi.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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