



C.R..P.(NPD)(MD).No.602 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(NPD)(MD)No.602 of 2025

and

C.M.P(MD) No.3294 of 2025

M.Eswari

... Petitioner/Petitioner
Petitioner/Defendant

Vs.

M.Jeeva

... Respondent/Respondent
Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C, seeking to set aside the fair and decretal order passed by the Sub Court, Theni made in I.A.No.3 of 2022 in I.A.No.2 of 2021 in O.S.No.137 of 2017, dated 26.09.2022.

For Petitioner : Mr.B.Fazil Kirmani
For Respondent : Mr.P.Siva Chandran

ORDER

The defendant in O.S.No.137 of 2017 on the file of the Sub Court, Theni, has filed the present Civil Revision Petition, challenging the dismissal of her application in I.A.No.2 of 2021 wherein, the trial Court has dismissed the application filed under Order IX Rule 9 of C.P.C.



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2. The defendant suffered an *ex parte* decree in a suit for specific performance on 06.09.2018. The defendant had filed I.A.No.2 of 2021 under Section 5 of Limitation Act, to condone the delay of 439 days in filing an application to set aside the *ex parte* decree. This application was dismissed for default on 16.03.2022. The defendant had filed I.A.No.3 of 2022 under Order IX Rule 9 of C.P.C, to restore I.A.No.2 of 2021. The said application has been dismissed by the trial Court on the ground that the defendant has not properly explained the reason for her non-appearance on 16.03.2022. Challenging the same, the present Civil Revision Petition has been filed.

3. According to the learned counsel appearing for the revision petitioner, I.A.No.3 of 2022 has been filed in time and therefore, the application ought to have been allowed and the defendant should have permitted to contest I.A.No.2 of 2021 on merits.

4. Per contra, the learned counsel appearing for the Caveator/Plaintiff had contended that there is a already delay of 439 days in filing an application under Order IX Rule 13 of CPC,. Only after receipt of notice in the execution proceedings, belatedly the present application has been filed.



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5. Heard both sides and perused the material on records.

6. The application to restore I.A.No.2 of 2021 has been filed in time.

Considering the fact that the suit is for specific performance, this Court is inclined to set aside the order impugned in the Civil Revision Petition.

7. Accordingly, this Civil Revision Petition stands allowed. The trial Court is directed to dispose of I.A.No.2 of 2021 on merits and in accordance with law on or before **30.06.2025**. There shall be no order as to costs. Consequently connected Miscellaneous Petition stands closed.

03.03.2025

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

1. The Sub Court, Theni
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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