



C.R.P.(MD)No.809 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2025

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THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.809 of 2024
and C.M.P.(MD).No.4526 of 2024

Valliyammai ... Petitioner/Petitioner/Defendant

Vs.

Narashimaraj ... Respondent/Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Section 115 of the Civil Procedure Code, to call for the records and set aside the fair and decreetal order, dated 12.12.2023 passed in I.A.No.215 of 2023 in O.S.No.21 of 2016 on the file of the District Munsif Court, Pudukkottai.

For Petitioner : Mr.R.Maheswaran

For Respondent : Mr.K.Navaneetharaja

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order, dated 12.12.2023 passed in I.A.No.215 of 2023 in O.S.No.21 of 2016 on the file of the District Munsif Court, Pudukkottai.



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2.The facts in brief:

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Suit in O.S.No.21 of 2016 was filed by the respondent herein seeking the relief of permanent injunction, mandatory injunction for removing the construction put up by him and for cost. The revision petitioner failed to appear before the trial Court and so he was set exparte and exparte decree was passed on 03.07.2018. To set aside the exparte decree and judgment, this revision petitioner filed I.A.No.215 of 2023, to condone the delay of 1639 days with the following averments: She was affected by illness in the spinal chord region. She was unable to walk and contact his Advocate for filing the written statement. At that time, her sons were in abroad. None was available to help her. In the meantime, Corona Lock down intervened. After recovery from her illness, she contacted her Advocate. At that time she was informed that she was set exparte on 03.07.2018. Hence, there is a delay.

3.That application was resisted by the respondent herein by filing counter stating that in I.A.No.64 of 2016, Commissioner was appointed. He visited the place with the help of Surveyor on 09.07.2016. At that time, the revision petitioner and his relatives prevented the



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Commissioner from executing the work. So Commissioner filed a memo seeking police protection. In I.A.No.1231 of 2016, by the order dated 29.11.2016, police protection was ordered. The Commissioner executed the work with police protection on 18.02.2017. The revision petitioner failed to file either the written statement or objection to the Commissioner report.

4.After the exparte decree, he sent Advocate notice to the revision petitioner to remove the structures. She failed. So he filed E.P.No.32 of 2019 for executing the decree. The very same Advocate appeared in EP proceedings for the revision petitioner. Even at the time, she failed to file the counter. So EP was ordered on 02.11.2022. When amin went to the property for executing, he was prevented.

5.After taking into account the conduct of the revision petitioner and his lethargic attitude the trial Court dismissed the petition.

6.Against which, this revision is preferred.



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7.The learned counsel for the revision petitioner would rely upon the judgment of the Honourable supreme Court made in the case of ***Mool Chandra Vs. Union of India and another*** reported in **2024 SCC online SC 1878**, wherein it has been held that

“6. Incidentally this point of delay and laches was also raised before the High Court and on this score the High Court relying upon the decision in Abhyankar case (N.L. Abhyankar v. Union of India [(1995) 1 Mah LJ 503]) observed that it is not an inflexible rule that whenever there is delay, the Court must and necessarily refuse to entertain the petition filed after a period of three years or more which is the normal period of limitation for filing a suit. The Bombay High Court in Abhyankar case [(1995) 1 Mah LJ 503] stated that the question is one of discretion to be followed in the facts and circumstances of each case and further stated:

“The real test for sound exercise of discretion by the High Court in this regard is not the physical running of time as such but the test is whether by reason of delay, there is such negligence on the part of the petitioner so as to infer that he has given up his claim or where the petitioner has moved the writ court, the rights of the third parties have come into being which



should not be allowed to be disturbed unless there is reasonable explanation for the delay.”

8.Per contra the learned counsel for the respondent also relied upon the Judgment of the Honourable Supreme Court made in the case of ***State of Madhya Pradesh Vs. Ramkumar Choudhary*** in ***SLP (C) Diary No.48636 of 2024***.

9.The order passed by the trial Court is self explanatory. The counter also set out the dates and events, which shows that the revision petitioner was aware of the Court proceedings. He tried to prevent not only the execution of the court decree, but also even commissioner warrant. After that, commissioner went with police protection for executing the court order. Next time also this revision petitioner prevented the court amin from executing the decree. So this attitude on the part of the revision petitioner shows that he tries his level best to prevent not only the trial process, but also the execution process.

10.Now he simply says that he was affected by ailment in the in spinal chord region and became unable to move. But, this ailment did not



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prevent him from preventing the execution of the Commissioner warrant as well as the decree. But, he wants this Court to believe him on the above said reason. Absolutely, the reason mentioned is without any substance and also unbelievable in view of his conduct.

11.In view of the above said facts and circumstances the Judgment cited by the revision petitioner does not help him. So, I find absolutely, no reason to interfere in the order passed by the trial Court. So the revision fails.

12.This Civil Revision Petition stands dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2025

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

- 1.The District Munsif, Pudukkottai.
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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