



C.R.P(MD)No.1072 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(MD)No.1072 of 2022

and

C.M.P(MD)No.4327 of 2022

Saminathan

... Petitioner / 4th Defendant

Vs

Balaji

... Respondent / Respondent / Defendant

PRAYER : This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order passed in I.A.No.200 of 2019 in O.S.No.1 of 2011 on the file of the Additional District Judge, Fast Track Court, Kumbakonam dated 16.09.2021 and consequently condone the delay of 294 days in filing exparte set aside petition by allowing this Civil Revision Petition.

For Petitioner : Mr.S.Sankar

For Respondent : Mr.B.Anandan



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ORDER

This Civil Revision petition is filed to set aside the fair and decreetal order passed in I.A.No.200 of 2019 in O.S.No.1 of 2011 on the file of the Additional District Judge, Fast Track Court, Kumbakonam dated 16.09.2021 and consequently condone the delay of 294 days in filing exparte set aside petition

2. The suit in O.S.No.131 of 2009 was filed by one Malarkodi against the respondent herein namely Balaji and others. A counter suit was filed by the respondent herein namely Balaji against this revision petitioner and others in O.S.No.1 of 2011. Both the suits were taken up together by the Additional District Judge, Kumbakonam. By the judgment and decree dated 21.02.2017, the suit in O.S.No.1 of 2011 was decreed as prayed for and time for delivery of possession was fixed at two months. Against which whether any appeal was preferred by any of the parties is not clear on records. But the revision petitioner herein stating that he was set ex parte in the main suit, he filed I.A.No.200/2019 with the following averments:



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3. The suit was taken care by his brother third respondent. He became sick from 2014. He was taking his brother to the treatment frequently and because of that he could not appear before the trial Court. So they were set ex parte on 27.03.2015. Because of the continuation of treatment, he could not contact even his advocate for filing a petition to set aside the ex parte decree. Later the suit was transferred to Kumbakonam. The transfer of suit was not intimated to them. So he was set ex parte on 21.02.2017. He purchased the property after due consideration.

4. That was resisted by the respondent herein by filing counter stating that the suit was decreed after full trial. It is not an ex parte decree as mentioned by the revision petitioner. Since no appeal was filed in time, E.P.No.96 of 2017 was filed. Even in the E.P., proceedings, the revision petitioner and others did not appear. Later paper publication was ordered. Court executed sale deed in his favour. To delay the further execution process, the petition was filed by the revision petitioner. After hearing both sides, the trial Court dismissed the petition stating that it is not an ex parte decree or an order as mentioned by the



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revision petitioner but it is a judgment on merits. So the petition under Section 5 of Limitation Act will not lie and if at all only an appeal could be filed. Challenging the same, this revision is preferred by the revision petitioner.

5. Even at the time of hearing, learned counsel for the respondent has submitted that it is a judgment on merits and not an ex parte. He has also produced a copy. Perusal of the judgment shows that the revision petitioner and others were set ex parte and judgment was rendered on merits. If at all, only an appeal will lie and not a petition to set aside the ex parte decree. As mentioned above, whether the other parties filed any appeal against the judgment and decree is not clear. But in the counter, it has been stated by the first respondent that no appeal was filed by any one within the time.

6. It is also seen that after the decree, execution petition was filed. Sale deed was registered in the name of the first respondent herein by the order of the Court. So the respondent would submit that the matter itself has become infructuous now. But it is seen that by wrong advise or



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misconstrued the facts, it appears that the I.A., petition was filed by the revision petitioner and thereafter the revision. It is nothing but an improper legal advise. The parties may not know the legal course.

7. I am of the considered view that the order of dismissal though, is correct, but liberty may be granted to the revision petitioner to file proper appeal against the decree. While calculating the time for filing the regular appeal, the time taken in this proceedings may be deducted under Section 14 of the Limitation Act. As per the order of the Court, dated 09.01.2025, the revision petitioner was directed to pay a sum of Rs.5,000/- as a cost to the respondent. Eventhough, the revision petitioner was ready to pay the sum of Rs.5,000/-, the respondent refused to receive cost. Considering the above said issue, the above said cost may be deposited to the credit of O.S.No.1 of 2011 before the learned Additional District Judge, Fast Track Court, Kumbakonam. Depending upon the outcome of the further proceedings, the parties are permitted to withdraw the amount now ordered to be deposited by the revision petitioner.



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8. With this liberty and direction, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition stands closed. No costs.

30-01-2025

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

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To

- 1.The Additional District Judge, Fast Track Court, Kumbakonam.
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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30.01.2025