



*C.R.P(MD)No.771 of 2019*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2025

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.R.P(MD)No.771 of 2019**

**and**

**C.M.P(MD)No.4706 of 2019**

P.Prakash

... Petitioner/Respondent/  
Plaintiff

Vs.

N.Krishnaraj (Died)

1.Kamalini

2.Minor.Krishnalini

3.Minor. Rakshana

... Respondents/Applicants/  
Defendants

*(R2 & R3 are represented by their mother and guardian R1)*

**PRAYER:** Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 01.04.2019 made in I.A.No.1 of 2019 in O.S.No.194 of 2015 on the file of learned III Additional District Munsif, Tiruchirappalli.



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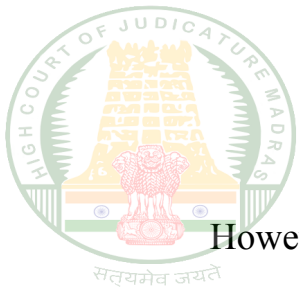
For Petitioner : Mr.P.Arun Jayatram  
For R1 : Mr.P.Vinoth  
for Mr.M.Pitchaimuthu  
For R2 & R3 : M/s.P.Krishnaveni

### **ORDER**

The plaintiff in O.S.No.194 of 2015 on the file of III Additional District Munsif Court, Tiruchirappalli is the revision petitioner herein.

2. The said suit was filed for the relief of permanent injunction not to disturb the possession. When P.W.1 chief examination was completed and it was posted for cross-examination, the defendants had remained ex parte and an ex parte decree came to be passed on 31.07.2018.

3. The defendants had filed an application under Order IX Rule 13 of Code of Civil Procedure on 21.01.2019, wherein it is stated that, due to viral fever, she was not able to attend the Court. The trial Court after considering the submissions on either side, had arrived at a finding that the defendant has not produced any document to establish her ill-health.



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However, it proceeded to allow the application on payment of cost of Rs.

1,500/-. This order is under challenge in the present revision petition.

4. According to the learned counsel appearing for the revision petitioner, the defendant was set ex-parte on 31.07.2018, but the application was presented only on 21.01.2019. The delay has not been explained properly and no separate application was filed to condone the delay. The learned trial Judge after arriving at a finding that the defendant has not explained the delay, should not have proceeded to allow the application filed under Order IX Rule 13.

5. Per contra, the learned counsel appearing for the respondents/defendants had contended that due to ill-health, she could not contact her counsel and when she attempted to make the payment of cost imposed by the Court, the learned counsel for the plaintiff had refused to receive the same and thereafter, the cost imposed by the Court has been deposited before the Court on 01.04.2019.

6. Heard the learned counsel on either side and perused the



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material records.

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7. Considering the fact that the defendant has been set ex parte for the first time and the delay in filing the application under Order IX Rule 13 is 143 days, this Court is of the considered opinion that the cost could be enhanced from Rs.1,500/- to Rs.5,000/-. The defendant has already deposited a sum of Rs.1,500/- before the trial Court. The Civil Revision Petition will stand disposed of, on condition to deposit a sum of Rs. 3,500/- (Rupees Three Thousand and Five Hundred only) before the Legal Aid Services, Madurai Bench of Madras High Court on or before **03.03.2025**. Consequently, connected Miscellaneous Petition is closed.

8. Post on 04.03.2025 for reporting compliance.

**19.02.2025**

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

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To

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1.The III Additional District Munsif,  
Tiruchirappalli.

2.The Section Officer,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR ,J.**

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Order made in  
C.R.P(MD)No.771 of 2019

19.02.2025