



**C.R.P(MD)No.1115 of 2024**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 30.01.2025**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ILANGO VAN**

**C.R.P(MD)No.1115 of 2024**

**and**

**C.M.P(MD)No.6216 of 2024**

Durairaj (died)

1.Sellam

2.Rameshkumar

3.Prabu

4.Mahindran

5.Brindha

6.Devi

... Petitioners / Petitioners / Defendants

**Vs**

Veerasamy (died)

1.Madhavi

2.Karthik

... Respondents / Respondents / Plaintiff

**PRAYER :** This Civil Revision petition is filed under Section 115 of Civil Procedure Code to set aside the fair and decreetal order dated 02.03.2023 made in I.A.No.2 of 2022 in O.S.No.21 of 2016 on file of the Subordinate Judge, Thuraiyur.

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For Petitioner : Mr.K.Prabhakar

For R1 & R2 : Mr.R.Gowri Shankar

### **ORDER**

This Civil Revision petition is filed to set aside the fair and decreetal order dated 02.03.2023 made in I.A.No.2 of 2022 in O.S.No.21 of 2016 on file of the Subordinate Judge, Thuraiyur.

2. The suit in O.S.No.88 of 2007 was filed by the respondent herein seeking the relief of specific performance on the basis of the agreement dated 08.08.2005. The defendant namely Durairaj appeared through an advocate and filed a statement. The plaintiff failed to appear and so he was set ex parte on 17.07.2018. The suit was decreed as prayed for, by order dated 18.07.2018. To set aside the ex parte decree I.A.No.2 of 2022 was filed by the revision petitioner stating that to set aside the ex parte decree and judgment, a petition was filed on 18.07.2018 through his advocate. It was returned due to some defects. It was represented again on 01.06.2020. On that date itself it was returned.



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In the petition, Mr.Singan was appeared for the revision petitioners. By mistake that petition was returned by the Court. Later, Corona lock down occurred. The petitioner's counsel Singan also died. Apart from that a compromise talk was going on between the parties. On 30.05.2020, the second plaintiff asked them to vacate the premises. Only at that time, the defendants came to know about the ex parte decree. Then they made enquiry with the advocate.

3. That was resisted by the respondents herein by filing counter stating that originally, ex parte decree was passed on 18.07.2018. That was set aside on payment of costs. Later, the suit was restored to file again the defendant remained ex parte. A petition was filed to set aside the ex parte decree on 10.08.2018. After prolonged time, it was not properly represented. Without prosecuting the earlier petition, the present petition is filed stating that there is only 92 days of delay.

4. In E.P.No.82 of 2019, the defendant appeared through his Advocate. Even in the E.P., he remained ex parte. Sale deed was executed on 19.04.2022. The days of delay is not properly calculated,



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which is 1324 days. The trial Court after hearing both sides taking note of the dates and events, dismissed the petition. Against which this Civil Revision Petition is preferred.

5. Heard both sides.

6. The dates and events mentioned in the counter and as well as the order of the Court speaks for itself. The defendants remained ex parte, not once but twice. First chance was given to the defendants that was not properly utilized. Again he remained ex parte, another ex parte order was passed. Even the petition filed by them to set aside the ex parte decree was not properly prosecuted. Repeatedly, that application came to be returned by the trial Court for representation, after rectifying the defects. Eventhough Mr.Singan, Advocate, appeared for the revision petitioner, died but as seen above he was appearing for the revision petitioner in E.P.No.82 of 2019. At that time, the above application was under process, later only, he was dead. Without prosecuting or processing the first petition, properly, the second petition is filed as if there is only a delay of 92 days that is factually incorrect. So this itself will indicate the lethargic attitude of the revision petitioners.



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7. I find no reasons to interfere with the order of dismissal passed by the trial Court. Accordingly, 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 Subordinate Judge, Thuraiyur.
- 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**