



C.R.P(NPD)(MD)No.1053 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.01.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

C.R.P(NPD)(MD)No.1053 of 2024

1.Selvaraj

2.Viji (Minor)

3.Suji (Minor)

4.Vetriselvan (Minor)

(1st petitioner is the Father and
Guardian of Minors 2 to 4)

... Petitioners

Vs

Pitchairethinam

... Respondent

Prayer : This Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order passed on 04.11.2019 in I.A.No.215 of 2019 in O.S.No.128 of 2005 on the file of the Subordinate Court, Pudukkottai.

For petitioners : Mr.V.Selvakumar

For Respondent : Mr.K.C.Maniyarasu



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ORDER

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This Civil Revision Petition is filed against the order passed on 04.11.2019 in I.A.No.215 of 2019 in O.S.No.128 of 2005 on the file of the Subordinate Court, Pudukkottai.

2. The facts in brief:

Suit in O.S.No.128 of 2005 was filed by the respondent herein seeking the relief of specific performance of the contract dated 08.01.2003 and in the alternative, refund of the advance amount of Rs.1,00,000/- with 12% interest and costs. The revision petitioners remained *ex parte* in the said suit. To set aside the *ex parte* decree, they filed a petition before the trial Court. On 13.06.2011, it came to be returned by the trial Court pointing out certain defects. Return was made on 17.10.2011. Later, that application were not re-presented. There was a delay of 2650 days. To condone the delay, I.A.No.215 of 2019 was filed by these revision petitioners stating that, the petitioners met with an accident and because of that, he could not contact his Advocate. Moreover return papers got mingled with other papers in the Advocate's



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office. It could not be traced out immediately and after tracing out the same, they re-present the same and hence, the delay.

3. That was resisted by the respondent by filing counter stating that in the main suit, the plaintiff was examined in chief and case was periodically adjourned for cross examination. Even after prolonged time, revision petitioners did not cross examine the plaintiff. Therefore, *ex parte* decree was passed on 02.02.2011. To execute the decree E.P.No. 89 of 2018 was filed. To delay the execution process, this petition is filed.

4. After hearing both sides, the trial Court dismissed the petition stating that the reasons set out in the petition are not proper and acceptable. Against which, this revision is preferred.

5. The revision petitioners repeated the very same ground mentioned by him before the trial Court.



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6. A bald averment is made to the effect that the first petitioner met with an accident, under went treatment and hence, he could not contact his Advocate. It is absolutely baseless. The date of accident, the time taken for the treatment and the date of recovery from the illness are not stated in the affidavit. The second reason is that the return papers got mingled with other papers in the Advocate's office. No doubt that we cannot expect any documentary evidence to show the same. But, at least the affidavit from the concerned Advocate, ought to have been filed along with the petition. There was no affidavit of the concerned Advocate. More over, the delay is huge and enormous. For what reason, the first petitioner was unable to prosecute the matter is not stated by him. The affidavit filed by the revision petitioners to set aside the *ex parte* decree shows that he was suffering from Jaundice for about five months, therefore, he was unable to conduct his Advocate in time. But, here he has stated that he has suffered accidental injury and so, could not prosecute the matter in a proper manner. Therefore, the conduct on the part of the revision petitioners clearly indicates that he is not interested in conducting the case properly, but wants to drag on the matter endlessly, more particularly, when execution proceedings are initiated. Therefore, I



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find absolutely no reason to interfere with the order passed by the trial Court.

7. Accordingly, this Civil Revision Petition fails and the same is dismissed. No costs.

29.01.2025

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

To

- 1.The Subordinate Court, Pudukkottai.
- 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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