



C.R.P.(PD)(MD).No.1855 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.R.P.(PD)(MD)No.1855 of 2021
and
C.M.P.(MD)No.9937 of 2021

S.Malaichamy

... Petitioner

Vs.

Gnanaprakhasam

... Respondent

PRAYER: Civil Revision Petition - filed under Article 227 of Constitution of India, to set aside the order and decreetal order dated 03.09.2021 made in I.A.No.628 of 2019 in O.S.No.238 of 2014 dated 03.09.2021 on the file of the Sub Court, Melur by allowing the Civil Revision Petition.

For Petitioner : Mr.M.Sankar
For Respondent : Mr.S.C.Herold Singh

ORDER

This Civil Revision Petition is filed challenging the decreetal order dated 03.09.2021 made in I.A.No.628 of 2019 in O.S.No.238 of 2014 dated 03.09.2021 on the file of the Sub Court, Melur.

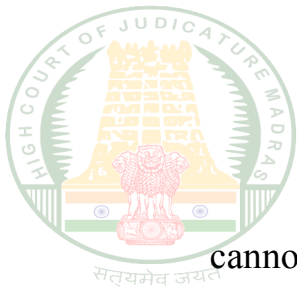


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2.The petitioner is the first defendant in O.S.No.238 of 2014. The respondent/plaintiff filed the said suit for specific performance. The suit was decreed *ex-parte* on 16.09.2016. Thereafter, the petitioner came to know about the *ex-parte* decree through his Advocate. Immediately, the petitioner has taken steps to set aside the said *ex-parte* decree by filing an application with the delay of 1055. However, the said application was dismissed. Challenging the same, the present Civil Revision Petition is filed.

3.The learned counsel for the petitioner would submit that the application filed by the petitioner seeking to condone the delay in filing an application to set aside the *ex-parte* decree, was dismissed on the ground that P.W.1 was cross examined by the petitioner and only thereafter, the petitioner did not turn up to conduct the case. Hence, the decree passed by the trial Court cannot be construed as *ex-parte* decree and now the application is filed by the petitioner only to drag on the suit proceedings. Such findings rendered by the trial Court are not sustainable. The valuable right of the petitioner to defend his case



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cannot be taken away by an *ex-parte* decree. Hence, the petitioner seeks an opportunity to conduct his case and he is also ready to pay the costs as fixed by this Court to the plaintiff.

4.Per contra, the learned counsel for the respondent submits that the suit was filed in the year 2014. *Ex-parte* decree was passed in the year 2016. However, the petitioner filed an application to set aside the said *ex-parte* decree only in the year 2019. Directing the parties to agitate the issue once again, that too after a period of nine years from the date of judgment and decree, is not proper. Hence, he seeks to dismiss this petition.

5.Heard the learned counsel appearing on either side and perused the materials placed on record.

6.The facts in the present case are not in dispute. Admittedly, the suit was filed in the year 2014 and *ex-parte* order was granted in the year 2016. It is also equally undisputed that an application to set aside the *ex-parte* decree was filed with a delay of 1055 days. The said application



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was dismissed. Admittedly, the suit was decreed *ex-parte*. In any event, an *ex-parte* decree cannot be allowed to continue, since if the *ex-parte* decree is sustained, it would cause serious prejudice to the petitioner.

7.Considering the nature of delay, the petitioner is directed to pay a sum of Rs.5,000/- (Rupees Five Thousand only) to the respondent/plaintiff and produce a proof for such payment before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On such receipt, the trial Court is directed to restore the suit on file and decide the same on merits and in accordance with law after providing opportunity to the parties concerned. The petitioner is also directed to cooperate with the trial proceedings. It is made clear that if the trial Court feels that the petitioner is not extending his cooperation for the trial proceedings, the trial Court shall draw an adverse inference as against the petitioner and proceed with the trial proceedings. Considering the fact that the suit is of the year 2016, the trial Court is directed to dispose of the suit within a period of six months from the date on which the suit is restored on file.



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9. With the above direction, this Civil Revision Petition is allowed.

No costs. Consequently, connected miscellaneous petition is closed.

19.06.2025

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

1. The Sub Court, Melur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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