

C.R.P.(PD)(MD).No.2222 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

RESERVED ON: 26.03.2025

DELIVERED ON: 28 .03.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**C.R.P.(PD)(MD).No.2222 of 2024
and CMP(MD).No.12573 of 2024**

1.Kulandaiammal

2.A.Thangadurai

3.A.Illaiyaraja

....Petitioners/Respondents
/Defendants

Vs

Sakthivel

...Respondent/Petitioner
Plaintiff

PRAYE: Civil Revision Case is filed under Article 227 of Constitution of India, to set aside the fair and decree order dated 23.04.2024 made in I.A.No.1 of 2023 in O.S.No.330 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Thottiyam.

For Petitioners : Mr.V.Sathurthiraja
For Mr.R.Govindaraj

For Respondent :M/s.J.Anandhavalli



C.R.P.(PD)(MD).No.2222 of 2024

ORDER

WEB COPY

The present revision petition has been filed by the defendants in O.S.No.330 of 2005 on the file of the District Munsif Cum Judicial Magistrate Court, Thottiyam challenging the allowing of an application filed to condone the delay of 3447 in filing an application to restore the suit that was dismissed for default.

2.A perusal of the records reveal that the respondent herein has filed the said suit for the relief of specific performance of a sale agreement dated 07.11.2002 or in the alternative for refund of advance amount of Rs.54,196/- along with 12% interest.

3.According to the plaintiff, the first defendant in the suit is the mother-in-law and the defendants 2 and 3 are his brothers-in-law. It is further contended by the plaintiff that the defendants have borrowed a sum of Rs.39,850/- from the plaintiff on 07.11.2002 and they have executed a pro-note on the same date. They have also executed a sale agreement in his favour to the effect that in case if the defendants did not repay the loan amount, the defendants agreed to execute a sale deed in favour of the plaintiff. Since the defendants have not repaid the amount, a legal notice was sent to the defendants on 18.03.2003 and there was no response from

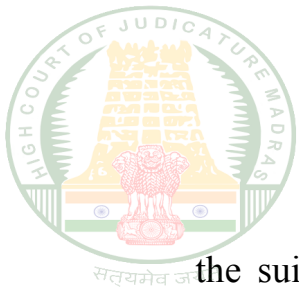


C.R.P.(PD)(MD).No.2222 of 2024

them. Another notice was sent by the plaintiff on 05.08.2005 and it was returned as 'un-served' . Therefore, the defendants neither executed a sale agreement nor repaid the amount. Hence, the suit for specific performance or in the alternative for refund of the amount along with 12% interest.

4.After the plaintiff had filed his proof affidavit and the suit was posted of his cross examination, the plaintiff had not appeared before the Court and the suit was dismissed for default on 03.10.2012. The plaintiff had filed I.A.No.1 of 2023 on 12.04.2022 seeking to condone the delay of 3447 days in filing an application to restore the suit. The said application was allowed by the trial Court on payment of cost of Rs.4,000/-. It is submitted that the cost has been paid in time. Challenging the said order, the present civil revision petition has been filed by the defendants.

5.According to the learned counsel for the revision petitioners/defendants, no proper reason has been assigned by the plaintiff for the huge delay of 3447 days. Though it is contended that plaintiff is regularly contacting his counsel, no dates have been mentioned. Even though it is contended that his counsel had passed away and he is not able to follow up the case, the plaintiff has not mentioned the date of death of his counsel or the date on which he came to know about the dismissal of



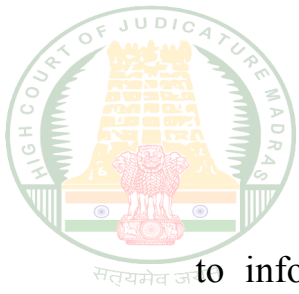
C.R.P.(PD)(MD).No.2222 of 2024

the suit. Even though, the defendants are ready and willing to repay the amount borrowed by them, he is not willing for the same and even then the plaintiff is insisting for continuation of the suit proceedings.

6.Per contra, the learned counsel for the respondent/plaintiff had contended that the trial Court has exercised its discretion and condoned the delay of 3447 days. Therefore, this Court in exercise of its power under Article 227 of Constitution of India may not interfere in the said order. She had further contended that the plaintiff is a rustic villager and believing the words of his counsel, he had kept quiet. Only after the death of his counsel, he came to know that the suit has been dismissed for default in the year 2012. Hence, she prayed for sustaining the order passed by the trial Court.

7.Heard both sides and perused the material records.

8.In the affidavit filed in support of the condone delay application, it is submitted that the plaintiff had engaged Mr.V.Singan, Advocate at Thuraiyur and he had shifted his practice to Madurai Bench of Madras High Court. Therefore, his juniors were taking care of the cases at Musiri Court. Mr.V.Singan was a permanent resident of Thuraiyur and he would enquire his juniors at Murisi to verify the status of the case and used



C.R.P.(PD)(MD).No.2222 of 2024

to inform the plaintiff. He was under the impression that the suit is pending. According to the condone delay affidavit, after death of his counsel, when he verified the Court records, it was found that the suit has been dismissed for default.

9.A perusal of the counter affidavit filed by the defendants reveals that the defendants have simply disputed the averments in the affidavit without put-forth any new case on their side. The trial Court after considering the submissions made on either side and considering the fact that the counsel has shifted his practice and thereafter, he passed away, has proceeded to condone the delay.

10.It is clear from the plaint averments that the son-in-law has filed a suit for specific performance or in the alternative seeking to recover the money advanced by him to his mother-in-law and brothers-in-law. An attempt made before the mediation centre was not successful. The trial Court has exercised its discretion and considering the factual situation, has proceeded to condone the delay, after imposing a cost of Rs.4,000/-.

11.When the trial Court has exercised its discretion in condoning the delay, unless extraordinary reasons are pointed out, this Court would not be in a position to exercise its jurisdiction under Article 227 of



C.R.P.(PD)(MD).No.2222 of 2024

Constitution of India to reverse the said order. However, considering the delay, this Court is inclined to impose a cost of Rs.10,000/- on the plaintiff for condoning the delay. The plaintiff having already paid a sum of Rs. 4,000/- as cost, he is directed to pay a further sum of Rs.6,000/- to the revision petitioners/defendants on or before 21.04.2025. On filing proof of the said payment, the trial Court is directed to proceed in accordance with law and dispose of the suit on or before 31.12.2025.

12.With the above said observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

28.03.2025

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



C.R.P.(PD)(MD).No.2222 of 2024

WEB COPY

To

- 1.The District Munsif Cum Judicial Magistrate Court,
Thottiyam
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(PD)(MD).No.2222 of 2024

R.VIJAYAKUMAR, J

msa

Pre-delivery order made in
C.R.P.(PD)(MD).No.2222 of 2024
and CMP(MD).No.12573 of 2024

28.03.2025