



C.R.P(MD)No.2782 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 03.01.2025**  
**DELIVERED ON : 23.01.2025**

CORAM:

**THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**

C.R.P(MD)No.2782 of 2024  
and  
C.M.P(MD)No.15689 of 2024

1.Moutham Kani

2.Pousiya Begam

3.Mohideen Banu

4.Laila Paritha ... Petitioners

Vs.

Bhagavathi ... Respondent

**PRAYER:** Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records of the petition and order passed in I.A.No.1 of 2023 in O.S.No.6 of 2023 on the file of the District Munsif Court, Senkottai, dated 21.12.2023 and set aside the same by allowing this Civil Revision Petition and pass such further or other orders as this Court.

For Petitioners : Mr.P.Athimoolapandian



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For Respondent : No appearance

### **ORDER**

This Civil Revision Petition is preferred against the order passed in I.A.No.1 of 2023 in O.S.No.6 of 2023, dated 21.12.2023 on the file of the District Munsif Court, Senkottai.

2. The revision petitioners are the defendants in the above suit. The respondent as plaintiff filed the above suit in O.S.No.6 of 2023 for partition. Since the revision petitioners / defendants failed to appear, an *ex parte* decree was passed on 05.07.2023. Thereafter, the revision petitioners / defendants filed an application in I.A.No.1 of 2023 in O.S.No.6 of 2023 under Order IX, Rule 7 of the Civil Procedure Code, 1908. The said application was allowed on 14.12.2023 on payment of cost of Rs.1,500/- to the respondent / plaintiff and posted the matter for compliance on 21.12.2023. Since the cost was not paid, the said application was dismissed for default. Assailing the said order, the present revision is preferred.



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3. The learned Counsel appearing for the revision petitioners submits that since the Counsel underwent an operation, he was unable to appear on the said date and pay the cost. Since it is a suit for partition and if the *ex parte* decree was not set aside, the right of the petitioner will be affected. Hence, prayed for setting aside the order passed in I.A.No.1 of 2023 in O.S.No.6 of 2023.

4. Despite notice being served and name of the respondent being printed in the cause list, there is no representation on behalf of the respondent.

5. Heard the learned Counsel for the petitioner and perused the materials available on record.

6. On perusal of records, it is clear that the respondent as plaintiff have filed the suit for partition against the petitioners / defendants. An *ex parte* decree was passed against the petitioners for non appearance. Thereafter, the petitioners have filed an application for setting aside the *ex parte* decree and the same was allowed on cost. Since the petitioners failed



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to pay the cost, the Trial Court dismissed the said application. Against which, the present revision is preferred.

7. The Hon'ble Supreme Court in a judgment reported in **AIR 2005 SC 3353** has held as follows:

*"We have no doubt that the upper limit fixed in Section 148 cannot take away the inherent power of the Court to pass orders as may be necessary for the ends of justice or to prevent abuse of process of Court. The rigid operation of the section would lead to absurdity.....Extension beyond maximum of 30 days, that can be permitted if the act could not be performed within 30 days for the reason beyond the control of the party."*

8. Going by the above decisions of the Hon'ble Supreme Court, it is clear that the Court has power to extend the time limit even after expiry of the original period. The revision petitioners ought to have file an application before the Trial Court for extension of time. It is settled principle that the power under Section 148 of CPC., can be exercised even if original period fixed had expired and such power is discretionary and intended to be exercised only to meet ends of justice. Since the respondent has filed the



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main suit for partition, the petitioners may be given an opportunity to put forth their case. Moreover, the reason attributed by the petitioners that since the Counsel underwent a surgery, he was unable to attend the Court is acceptable. The said reason was not rebutted on the side of the respondent. Therefore, the impugned order needs interference and thus, this Civil Revision Petition stands allowed by granting liberty to the petitioners herein to file an application before the Trial Court for extension of time. The Trial Court shall also consider the same applying the propositions laid by the Hon'ble Apex Court.

9. In the result, this Civil Revision Petition stands allowed. The impugned order passed in I.A.No.1 of 2023 in O.S.No.6 of 2023 on the file of the District Munsif Court, Senkottai is set aside. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

**23.01.2025**

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

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To  
The District Munsif Court,  
Senkottai.



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**K.GOVINDARAJAN THILAKAVADI, J.**

BTR

Order made in  
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**23.01.2025**