



C.R.P(MD)No.2853 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.10.2025**

CORAM

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.R.P(MD)No.2853 of 2025
and
C.M.P(MD)No.16472 of 2025

M.Subbulakshmi

... Petitioner/Appellant/
Respondent/Defendant

Vs.

K.Ramasamy

... Respondent/Respondent/
Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the return order dated 15.09.2025 of unnumbered E.A.No. of 2025 in E.P.No.44 of 2023 in O.S.No.1308 of 2022 on the file of the learned Sub Court, Ottanchathiram.

For Petitioner : Mr.T.Thirumurugan

ORDER

The instant Civil Revision Petition has been filed to set aside the return order dated 15.09.2025 of unnumbered E.A.No. of 2025 in



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E.P.No.44 of 2023 in O.S.No.1308 of 2022 on the file of the learned Sub Court, Ottanchathiram.

2.The learned counsel for the petitioner submits that the respondent had filed a suit for specific performance in respect of the suit schedule property. The said suit was decreed by judgment and decree dated 02.12.2022 setting the petitioner *ex parte*. The execution petition in E.P.No.44 of 2023 filed by the respondent was also allowed *ex parte*. The petitioner filed interlocutory application in I.A.No.1 of 2025 to set aside the *ex parte* decree and the same is also pending before the Trial Court. He has also filed an application seeking stay of the proceedings till the disposal of the restoration petition. The said application was returned with an endorsement stating that the said application had been filed beyond the prescribed period of thirty days. He submits that it is the duty of the trial Court to stay the further proceedings in the execution petition when an application to set aside the *ex parte* decree is pending. Therefore, he prays this Court to set aside the return and direct the Execution Court to take execution petition on file.



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3. I have considered the submission made by the learned counsel for the petitioner and perused the materials available on record.

4. The petitioner has filed an application to set aside the *ex parte* order passed in the execution petition under Order 21 Rule 106(3) of the C.P.C., envisaged that the application to set aside the *ex parte* order should be filed within a period of 30 days either from the date of the order or in the notice was not duly served within a period of 30 days from the date of knowledge the applicant has.

5. A perusal of the affidavit filed by the petitioner in support of the application discloses that the petitioner had the knowledge of the suit, but on the misrepresentation of the third party, she had not entered appearance in the proceedings. Therefore, having knowledge of the suit, the petitioner had failed to enter appearance in the suit and she had not been diligent in prosecuting the suit. The petitioner should have filed the application to set aside the *ex parte* decree within a period of thirty days, which she failed to do so. Hence, I do not find any infirmity in the return made by the Court below.



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6. In fine, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

13.10.2025

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

- 1.The Sub Court, Ottanchathiram.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.KUMARESH BABU,J.

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