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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03 .11.2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

CNR:{HCMA010142922026}

Case QR

CRP Nos.6750, 6760, 6767 & 6773 of 2026
CMP Nos.29072, 29122, 29142 & 29153 of 2026

C.R.P.No.6750 of 2026

P.S.K.Shanmugarajan (Died)
K.S. Gnanasekaran (Died)

1. Susheela
2. G.Subburaj
3. G.Prabhakaran
4. G.Dharmaraj

..Petitioner(s)

Vs

V.Kumar

..Respondent(s)

CRP No. 6767 of 2026

Case QR

CNR:{HCMA010143022026}

1. Susheela
2. G.Subburaj
3. G.Prabhakaran
4. G.Dharmaraj

..Appellant(s)

Vs

1. P. C. Vishwanathan
2. A.Karuppasamy

..Respondent(s)

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CRP No. 6760 of 2026

Case QR

CNR:{HCMA010143032026}

1. Susheela
2. G.Subburaj
3. G.Prabhakaran
4. G.Dharmaraj

..Appellant(s)

Vs

1. V. Kumar
2. A.Karuppasamy

..Respondent(s)

CRP No. 6773 of 2026

Case QR

CNR:{HCMA010143042026}

P. S. K. Shanmugarajan (Died),
K. S. Gnanasekaran (Died),

1. Susheela
2. G.Subburaj
3. G.Prabhakaran
4. G.Dharmaraj

..Appellant(s)

Vs

P. C. Vishwanathan

..Respondent(s)

Prayer in CRP No. 6750 of 2026:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleased to set aside the order dated 01.09.2025 passed in E.A.No.2 of 2025 in EP.No.118 of 2017 in O.S.No.146 of 2004 on the file of learned I Additional Subordinate Judge, Erode and allow the Civil Revision Petition.

Prayer in CRP No. 6767 of 2026:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleased to set aside the order dated 24.09.2025, passed in I.A.No. 297 of 2020 in Unnumbered AS in ASCFR No.2813 of 2020 on the file of the learned Principal District Judge, Erode and allow the CRP and thus render justice.

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Prayer in CRP No. 6760 of 2026:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleased to set aside the order dated 24.09.2025, passed in I.A.No.296 of 2020 in Unnumbered AS in ASCFR No.2810 of 2020 on the file of the learned Principal District Judge, Erode and allow the CRP and thus redner justice.

Prayer in CRP No. 6773 of 2026:- Civil Revision Petition filed under Section 115 of Civil Procedure Code, pleased to set aside the order dated 01.09.2025, passed in E.A.No.3 of 2025 in E.P.No.114 of 2017 in O.S.No. 148 of 2004 on the file of the learned I Additional Subordinate Judge, Erode and allow the CRP and thus render justice.

In all C.R.P's:-

For Petitioner(s): Mr.R.Bharathkumar
for Mr.R.Murali

COMMON ORDER

C.R.P.Nos.6750 & 6773 of 2026 are filed challenging the order passed by the trial Court dismissing the applications filed by the petitioners under Section 28 of Specific Relief Act, 1963, seeking rescission of contract on the ground that respondents / Decree Holders failed to deposit the balance sale consideration as per the decree for specific performance.

2.C.R.P.Nos.6760 & 6767 of 2026 are filed challenging the order passed by the First Appellate Court dismissing the applications filed by the petitioners seeking to condone the delay of 5551 days in filing first Appeal challenging the judgment and decree passed in suits for specific performance filed by the

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respondents in O.S.Nos.146 & 148 of 2004 on the file of the learned I Additional Subordinate Judge, Erode.

3.The petitioners herein are legal representatives of one K.S.Gnanasekaran who was arrayed as second defendant in the suits for specific performance filed by the respondents. It is seen from the typed set of papers that respondents filed suits in O.S.Nos.146 & 148 of 2004 seeking specific performance of two different sale agreements entered with predecessor in interest of the petitioners namely K.S.Gnanasekaran and the father of said K.S.Gnanasekaran namely P.S.K.Shanmugarajan. Both the defendants in the said suits were represented by their power of attorney A.Karuppasamy. The said suits were decreed on 23.12.2004 granting relief of specific performance as prayed for by the respondents with a direction to them to deposit balance sale consideration of Rs.5000/- each. The said decrees were put into execution in E.P.Nos.114 & 118 of 2017. Since the respondents failed to deposit the balance sale consideration, applications were filed seeking to condone the delay in depositing the balance sale consideration and issue challan for deposit of the amount. The said applications filed by the respondents in E.A.Nos.429 & 430 of 2016 in E.P.Nos.114 & 118 of 2017 were allowed on 13.06.2017. Thereafter, the petitioners who are claiming right under the second defendant in the suits filed appeals challenging the decree passed in the original suits. The appeals were filed only in the year 2020 with a delay of 5551 days. The condone delay

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petitions were dismissed by the First Appellate Court. Aggrieved by the same, the petitioners have come before this Court.

4.After filing the appeals challenging the original decree with a delay of 5551 days, the petitioners also filed applications under Section 28 of Specific Relief Act, 1963, seeking rescission of contract. Those applications were dismissed by the trial Court. The said orders passed by the trial Court are also challenged in these Revisions.

5.The learned counsel for the petitioners mainly contended the respondents herein filed suits for specific performance against the predecessor in interest of the petitioners namely K.S.Gnanasekaran and his father P.S.K.Shanmugarajan and obtained a collusive decree against them. According to the learned counsel there was a collusion between the respondents and the power agent of defendants in the said suits. It is further stated the first defendant died on 29.01.2011 and the second defendant died on 27.08.2017 and petitioners acquired knowledge about the suits as well as Execution Petitions only in the year 2018. The learned counsel also submitted though no time limit has been prescribed under the decree for specific performance for deposit of balance sale consideration, the respondents failed to deposit the balance sale consideration within reasonable time. Ultimately, they filed applications to condone the delay in depositing the balance sale consideration only in the year

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2016. In the said applications also the predecessor in interest of the petitioners was represented by power agent A.Karuppasamy. According to the petitioners their predecessor in interest had no knowledge about the suits as well as the Execution Petitions and entire proceedings was vitiated by collusion between the respondents / plaintiffs and the power agent A.Karuppasamy.

6.It is seen from the averment filed in support of the condone delay petitions, the petitioners acquired knowledge about the suits as well as execution proceedings as early as May 2018. However, appeals by the petitioners have been filed only in March 2020 along with petitions to condone the delay of 5551 days. The petitioners have no plausible explanation for the delay from May 2018 to March 2020. Though it is stated the petitioner's predecessor in interest were not aware of the suit proceedings as well as execution proceedings and there was a collusion between the respondents / plaintiffs and the power agent A.Karuppaswamy, whether there was any collusion as alleged and whether the decree is vitiated by fraud etc., are all the questions to be decided in a properly instituted proceedings based on evidence. Till date the petitioners have not initiated any proceedings to set aside the decree passed against their predecessor in interest on the ground of fraud. By filing appeals challenging the original decree, petitioners are not entitled to challenge the same on the ground of fraud as it requires evidence. The decree passed by the trial Court has been decided based on the pleadings and the

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evidence already available on record. If it is the case of the petitioners that the decree obtained by the respondents is vitiated by collusion and fraud, the petitioners should have filed a suit seeking to set aside the decree on the ground of fraud by making necessary plea.

7.It is settled law that a plea of fraud shall be specifically pleaded and meticulously proved by leading cogent evidence. In the case on hand even though the petitioners alleged collusion between plaintiffs and power agent of their predecessor in interest namely Karuppasamy, they failed to enter witness box and depose in support of said plea, for the reasons best known to them. The plea of fraud cannot be established by filing a mere affidavit without entering the witness box and facing cross-examination. First of all the petitioners have not taken any steps to set aside the decree passed in the suit on the ground of fraud. Further even in the condone delay petitions, they failed to lead any evidence.

8.Even as per the admitted case, petitioners acquired knowledge about the suits, decree and execution proceedings as early as May 2018. Till date no steps have been taken by the petitioners to get the decree set aside by filing appropriate petitions. Therefore, the reasoning given by the petitioners to condone the delay in filing the appeals cannot be accepted, especially when the delay from May 2018 to March 2020 is not explained by the petitioners. The

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First Appellate Court rightly observed that the petitioners have the option to challenge the decree on the ground of fraud in a manner known to law and refused to condone the delay. I do not find any error in the order passed by the First Appellate Court refusing to condone the delay of 5551 days in filing the Appeals. Hence, Civil Revision Petitions in C.R.P.Nos.6767& 6760 of 2026 which are filed against the dismissal of the condone delay petitions are dismissed.

9.As far as the other two Revisions challenging the dismissal of applications filed by the petitioners under Section 28 of Specific Relief Act, 1963, seeking rescission of contract are concerned, the learned counsel by relying on the judgment of the Apex Court in ***Habban Shah Vs. Sheruddin*** reported in ***(2026) SCC Online SC 814*** vehemently contended that respondents failed to deposit the balance sale consideration as per the decree and hence the petitioners are entitled to seek rescission of contract.

10.A perusal of the judgment passed in the original suits would indicate the respondents had been directed to deposit the balance sale consideration of Rs.5000/- each and get the sale deed executed in their favour. The defendants have been granted one month time to execute the sale deed. However, the plaintiffs / respondents failed to deposit the balance sale consideration within the said period of one month. Subsequently, the respondents filed applications

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seeking to condone the delay and issue challan and those applications were allowed by order dated 13.06.2017. Till date the petitioners have not challenged the order passed in the applications filed by the respondents seeking to condone the delay in depositing the balance sale consideration. The order passed by the Executing Court permitting the respondents to deposit the amount had attained finality as it is not challenged by the petitioners. Without challenging the order passed in applications filed by the respondents seeking to condone the delay in depositing the amount, petitioners filed the present applications seeking rescission of contract. When the time fixed by the decree has been extended by a subsequent order passed on the applications filed by the respondents, the petitioners are not entitled to maintain the present applications seeking rescission of contract.

11.In ***Chanda (Dead) through LR's Vs. Rattni and Another*** reported in ***(2007) 14 SCC 26***, the Hon'ble Apex Court held that the trial Court has got power to extend the time for payment of balance sale consideration even if the decree stipulates that balance amount shall be paid within a particular date and on failure to deposit the amount the suit would stand dismissed. The relevant observation reads as follows:-

> *9.The decree for specific performance has been described as a preliminary decree. The power under Section 28 of the Act is discretionary and the Court cannot ordinarily annul the*

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decree once passed by it. Although the power to annul the decree exists yet Section 28 of the Act provides for complete relief to both the parties in terms of the decree. The Court does not cease to have the power to extend the time even though the trial court had earlier directed in the decree that payment of balance price to be made by certain date and on failure the suit to stand dismissed. The power exercisable under this Section is discretionary. [Emphasis supplied by this Court).

12.In ***Johri Singh Vs. Sukh Pal Singh and others*** reported in ***(1989) 4 SCC 403,*** while considering the power of the Court to extend the time under Section 148 of Code of Civil Procedure, the Hon'ble Apex Court observed that the extension can be granted even after expiry of the original time fixed. The relevant observation reads as follows:-

17.Section 148 deals with enlargement of time and provides:

"Where any period is fixed or granted by the Court for the doing of any act prescribed or allowed by this Code, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired."

18.This section empowers the court to extend the time fixed by it even after the expiry of the period originally fixed. It by implication allows the court to enlarge the time before the time originally fixed. The use of the word 'may' shows that the power is discretionary, and the court is, therefore, entitled to take into account the conduct of the party praying for such extension.

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13.In ***P.R.Yelumalai Vs. N.M.Ravi*** reported in ***(2015) 9 SCC 52,*** the Hon'ble Apex Court held the extension of time can be granted even after expiry of the period originally fixed. The relevant observation reads as follows:-

> *12.Arguments were also made by the learned counsel on both sides as to which Court had the power to grant extension of time and several authorities were cited on this point. However, we find that after the executing court had dismissed the execution proceeding on the ground of delay in depositing the amount, the same question was dealt with by the original side of the trial court as well in the application for extension of time. Since both the courts have given concurrent findings that the case for extension of time was not made out, we are of the opinion that dealing with the question as to which court had the jurisdiction to decide this point, will be an exercise in futility. It would suffice to say that the court has the discretion to extend the time upon an application made by the party required to act within a stipulated time period. Extension of time can be granted even after the expiry of the period originally fixed.* [*Emphasis supplied by this Court]*

14.In the light of the case laws mentioned above it is clear that the Court has got power to extend the time fixed under the decree even after the expiry of time. In the case on hand the respondents admittedly filed applications seeking extension of time and the same were allowed. Till date the petitioners have not challenged the said order in the manner known to law. When the said order passed in favour of the respondents has attained finality, the petitioners are not entitled to maintain separate applications under Section 28 of Specific Relief

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Act, 1963 seeking rescission of the contract. Petitions under Section 28 of Specific Relief Act, 1963, seeking rescission of the contract is maintainable only on the ground that respondents failed to deposit the balance sale consideration within the time stipulated under the decree. In the facts of the present case, the respondents already obtained order from the Court seeking extension of time and the said applications are allowed. Therefore, the present applications filed by the petitioners seeking rescission of agreement cannot be entertained at all when the order extending time is not challenged by the petitioners.

15.A faint attempt has been made by the learned counsel for the petitioners by submitting that applications of the respondents seeking condonation of delay were filed against dead person namely P.S.K.Shanmugarajan, the first defendant in the suit. A perusal of the typed set of papers would indicate the applications for condonation of delay have been filed by the respondents against both the defendants and the first defendant has been shown as a deceased. The second defendant is none other than the son of the first defendant. Therefore, the estate of the deceased is very well represented by his legal representative. Therefore, the said contention raised by the learned counsel for the petitioners is also not appealable to this Court.

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16.In view of the above discussions, the C.R.P.Nos.6773 & 6750 of 2026 are also dismissed. Consequently, connected Civil Miscellaneous Petitions stand closed. No costs.

03.11.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

EP
To:-
1.I Additional Subordinate Judge, Erode
2.The Principal District Judge, Erode.

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S.SOUNTHAR J.

EP

CRP Nos.6750, 6760, 6767 & 6773 of 2026
CMP Nos.29072, 29122, 29142 & 29153 of 2026

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