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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2025

PRONOUNCED ON : 28.01.2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

Civil Revision Petition No.833 of 2023

1. N. Arumuga Nainar,

2. N. Murugan,

3. N. Kandhasamy,

All three having address at:
Site No.239, Muthukumar Nagar,
P.M. Samy Colony,
Rathinapuri,
Coimbatore.

... Revision Petitioners/Petitioners/Defendants

Versus

D. Selvaraj,
No.102, 7th Street Extension,
Coimbatore.

...Respondent/Respondent/Plaintiff



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Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the Return Order dated December 22, 2022 made in unnumbered Interlocutory Application in O.S. No.719 of 2007 by the IV Additional District Judge, Coimbatore and direct the IV Additional District Judge, Coimbatore to number the said Interlocutory Application and to allow this Civil Revision Petition.

For Petitioners : Mr. R.N. Amarnath

For Respondent : Mr. S. Mukunth
Senior Counsel
for Mr.A.Parthasarathy

ORDER

Feeling aggrieved by the rejection order dated December 22, 2022 passed in unnumbered Interlocutory Application in O.S. No.719 of 2007 filed under Section 5 of 'the Limitation Act, 1963 by 'the IV Additional District Judge, Coimbatore' (hereinafter referred as the 'Trial Court'), the present Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950 by the petitioner therein praying to set aside the rejection order.

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2. Facts necessary for the disposal of this Civil Revision Petition are as follows:

2.1.The revision petitioners herein are the defendants and the respondent herein is the plaintiff in O.S.No.719 of 2007 before the Trial Court. The suit was filed for the relief of specific performance based on the sale agreement dated December 19, 2005 which was entered into between the petitioners and the respondent herein. The petitioners filed their written statement in the suit. When the suit came up for hearing on June 29, 2009 before the Trial Court, the petitioners were called absent and set *ex-parte*. The suit ended in an *ex-parte* decree which was passed on June 29, 2009. Pursuant to the *ex-parte* decree, the respondent herein filed the Execution Petition in E.P. No.201 of 2021 on the file of the Trial Court (which is also the Execution Court) and the same is pending.

2.2. According to the petitioners herein, the petitioners filed a petition to set aside the *ex-parte* decree along with condonation of delay petition before the Trial Court in the year 2012 itself. The said application was neither

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returned nor numbered and the same was misplaced in the Trial Court. Under such circumstances, the petitioners received the notice in the aforesaid execution petition on December 27, 2021 during the Covid-19 Pandemic period. Hence, the petitioners herein filed a fresh application to set aside the *ex-parte* decree along with a delay condonation petition praying to condone the delay of 4690 days before the Trial Court. The Trial Court by order dated December 22, 2022 rejected the said application observing as follows:

“Heard. Records perused. This Suit O.S.No.719/2007 filed on 06.09.2007. The same was taken on file in O.S.No.719/2007 on 10.09.2007. The Judgment in O.S. No.719 of 2007 pronounced on June 29, 2009, the petition under Section 5 of Limitation Act has been filed on June 02, 2022 after lapse of 12 years and now 15 years over. As per Limitation Act, the time limit prescribed is 12 years for setting aside the decree passed by this Court. Hence, there is no merits in this petition. Petition is rejected”.

2.3. Challenging the aforesaid rejection order, the petitioner has filed the present revision petition.

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3. Mr. R.N. Amarnath, the learned Counsel for the petitioners argued that the Trial Court without considering the facts and circumstances of the case and without adhering to the principles of natural justice, mechanically rejected the application filed under Section 5 of the Limitation Act, 1963. The Trial Court ought to have numbered the said application and decided the matter after hearing both sides. Hence, the order of the rejection is bad in law. Accordingly, he prayed to allow the present Civil Revision Petition by setting aside the rejection order dated December 22, 2022 passed by the Trial Court and directing the Trial Court to take on file the said application and to decide the same in accordance with law.

4. Per contra, Mr. Mukunth, learned Senior Counsel appearing on behalf of Mr.A.Parthasarathy, learned Counsel on record for the respondent argued that the petitioners herein / defendants after receiving the summon in the Original Suit, entered appearance through an Advocate. However, they wantonly allowed the suit *ex-parte*, resulting in the Trial Court passing an *ex-parte* decree on June 29, 2009. It has been further submitted that according



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to the petitioners, they filed the said application to set aside the *ex-parte* decree along with a condonation of delay application, and the same was returned in the year 2012 itself, and later, the petitioners re-presented the same but the applications were misplaced in the Court. If it is so, the petitioners ought to have taken steps either to reconstruct the missed applications, or ought to have made a representation before the Trial Court for appropriate remedy. However, the petitioner did not take any steps in this regard. Hence, the second set of applications praying to set aside the *ex-parte* decree and to condone the delay, for the same cause of action is not maintainable. Hence, the Trial Court rightly rejected the applications which were filed after 12 years from the date of *ex-parte* decree. The Trial Court rightly exercised its jurisdiction to reject the application filed under Section 5 of the Limitation Act, 1963. Hence, there is no warrant to interfere with the Order of the Trial Court. Accordingly, he prayed to dismiss the Civil Revision Petition and sustain the Order passed by the Trial Court.

5. This Court has considered both sides arguments and perused all the documents available on record.

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6. It is stated that in the year 2012 itself, the petitioners herein filed the petition to set aside *ex-parte* decree along with a condonation of delay application. The same is to have gone missing in the Court. Further, it is stated that after receiving the notice in the Execution Petition in E.P. No.201 of 2021, the petitioners have filed another application to set aside the *ex-parte* decree along with an application under Section 5 of the Limitation Act, 1963.

7. While being so, the Trial Court without taking on file the Section 5 application, has rejected the same by order dated December 22, 2022 which is under challenge. This Court is of the view that the approach of the Trial Court in this regard is not acceptable. The Trial Court ought to have taken on file the application under Section 5 of the Limitation Act, 1963 if it is otherwise in order and heard the petitioner on the point of limitation. The Order under challenge was passed without adhering to the principles of natural justice. Without hearing the revision petitioners and without affording an opportunity to them to put forth their case, the rejection order of the Trial Court is not sustainable. Hence, this Court is inclined to set aside the rejection order dated

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December 22, 2022. The Trial Court is hereby directed to take on file the said application filed under Section 5 of the Limitation Act, 1963, in order to give an opportunity to the petitioners to put forth their case and let in evidence. After hearing the revision petitioners and the respondent, the Trial Court shall pass appropriate orders in accordance with law.

8. With the aforesaid observations, this Civil Revision Petition is allowed. Considering the facts and circumstances of the case, there shall be no order as to costs.

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Index : Yes
Speaking order : Yes
Neutral Case Citation : Yes
lbm/tk

To

The IV Additional District Judge
Coimbatore.

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R. SAKTHIVEL, J.

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