

C.R.P.(MD) No.1642 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(MD) No.1642 of 2026
and
CMP(MD) No.7981 of 2026**

1.S.Kulanthaivel

2.N.Nagaraj

3.N.Natchimuthu

... Petitioners

vs.

1.T.K.Gangon Menon

2.M.Krishnan

... Respondents

PRAYER: Petition filed under Section 115 of CPC., to set aside the fair and decreetal order dated 02.08.2011 made in I.A.No.524 of 2011 in O.S.No.303 of 1996 on the file of Sub Court, Palani.

For Petitioners : Mr.G.Sridharan

For Respondents : Mr.Mohamed Haneef for
Mr.D.Venkatesh



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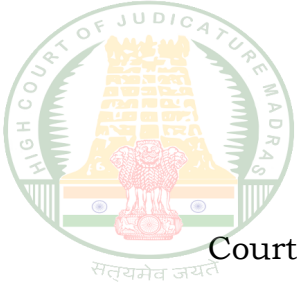
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ORDER

The defendants 1 to 3 in a suit for specific performance assail the order passed by the learned Trial Judge in extending the time for deposit of the amount by a non speaking order and without notice to them.

2.O.S.No.303 of 1996 is a suit for specific performance of an agreement of sale said to have been entered into between the plaintiff and the defendants. The sale agreement projected is said to have been entered into on 02.08.1995. The plaintiff, alleging that the defendants are not ready and willing to convert the sale agreement into a sale deed, issued a notice on 25.07.1996 to the defendants 1 to 3. He got information that the defendants are going to alienate the property in favour of one Krishnan and therefore, issued a telegraphic notice on 02.08.1996. Soon thereafter, he presented the suit on 21.08.1996.

3.In the said suit, summons were served on the defendants. Pending the suit, the plaintiff impleaded a gentleman, by name, Krishnan, who he feared would purchase the property, giving a go-by to his sale agreement dated 02.08.1995. After filing of their written statements, the defendants remained *ex parte*. Consequently, the Trial



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Court, by way of a judgment and decree dated 19.12.2001, decreed the suit as prayed for. As there was balance of sale consideration of Rs.2,00,999/- to be paid, the Trial Court passed the following decree:-

“1.நீதிமன்றம் குறிப்பிடும் மூன்று மாத காலத்திற்குள் கிரைய மீதித் தொகையை வாதி நீதிமன்றத்தில் வைப்பீடு செய்து பிரதிவாதிகள் கிரைய ஆவணம் வாதியின் பெயருக்கு வழக்கிடைச் சொத்துக்களை எழுதிப் பதந்து கொடுக்க வேண்டுமென்று உத்தரவிடப்படுகிறது.

2.அவ்விதம் 1 முதல் 3 பிரதிவாதிகள் செய்யத் தவறினால் நீதிமன்றம் மூலம் கிரைய ஆவணம் பதிந்து கொள்ள வாதிக்கு உரிமையளிக்கப்படுகிறது.”

4.It is pertinent to point out that all that was paid by the plaintiff to the defendants was a paltry sum of Rs.4,001/- as advance at the time of entering into the sale agreement. Though the plaintiff was granted three months time, he did not deposit the amount into the Court as per the decree.

5. After a gap of nearly 10 years, he filed a petition in I.A.No.524 of 2011 before the learned Trial Judge on 02.07.2011 seeking extension of time to deposit the balance sale consideration as per Clause 1 of the decree.



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6.The learned Trial Judge took up the application one month thereafter and by a single word '*permitted*', he allowed the same. The certified copy of the order that has been produced by the civil revision petitioners indicates that the learned Trial Judge had not issued notice in the application filed for seeking extension of time.

7. The defendants had, in the meantime, alienated the property in favour of one Jothi Lakshmi on 05.09.1996. She filed a suit in O.S.No.20 of 2012, on the file of the Additional Sub Court at Palani for declaration of her title and for declaration that the decree passed in this suit is null and void and for consequential relief of injunction. Initially, this suit came to be dismissed on 20.01.2022. The appeal preferred therefrom, in A.S.No.4 of 2022 came to be allowed on 15.03.2024, from which a second appeal in S.A.(MD) No.488 of 2024 has been preferred. By a separate order passed today, the second appeal has been admitted.

8. The grievances of Mr.G.Sridharan are as follows:-

“i) Prior to the passing of the order in I.A.No. 524 of 2011, no notice had been issued to the defendants.



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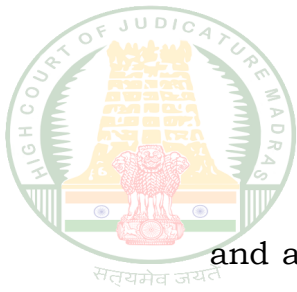
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ii) By virtue of extension of time granted invoking Section 148 r/w 151 of the Code, the Trial Court has nullified the right of the defendants to move an application under Section 28 of the Specific Relief Act seeking rescission of the contract.”

9.In fine, the plea of Mr.G.Sridharan can be crystallized stating that as the right has been given to the defendants to move an application for rescission of contract and since it is the duty of the plaintiff in a suit for specific performance to prove readiness and willingness from the date of the agreement, throughout the pendency of the suit till the date of decree, allowing the application seeking extension of time to deposit the balance without even a semblance of notice to the defendant, has taken away the valuable right to seek rescission.

10.This Court entertained the revision and ordered notice to the respondents. Mr.D.Venkatesh has entered appearance for the respondents.

11.Mr.Mohamed Haneef appearing for Mr.D.Venkatesh argues that the learned Trial Judge has exercised the discretion vested in him

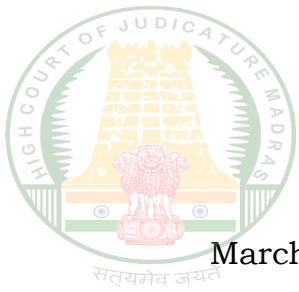


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and as the defendants had remained *ex parte* in the suit, the learned Trial Judge decided not to issue notice to them. He states that there is no error in the impugned order and that pursuant to the order of the Court extending time, the plaintiff has also deposited the amount and has taken further steps to execute the decree in EP.No.153 of 2011 on the file of the Principal Sub Court at Palani. He states that much water has flown under the bridge and it is too late in the day for the civil revision petitioners seeking to set aside the order.

12.I have carefully considered the submissions of both sides. I have gone through the records.

13.Here is a suit for specific performance of a contract of sale. The plaintiff claims that he had entered into an agreement with the defendants to purchase the suit schedule mentioned property for a sum of Rs.2,05,000/-. In pursuance thereof, he is said to have paid a sum of Rs.4,001/- as advance. The agreement was entered into on 02.08.1995. The suit came to be presented on 21.08.1996. He obtained a decree, albeit an *ex parte* one, on 19.12.2001. Clause I in the decree calls upon him to deposit the amount within a period of **three months** from the date of the decree. The period expired in



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March, 2002. It is not in dispute that the plaintiff did not deposit the amount within the time granted by the Court.

14.Nothing seems to have happened between 19.01.2001 and 02.07.2011. Suddenly, the plaintiff woke up from his rip van winkle attitude and moved an application seeking extension of time to deposit of the balance of sale consideration. It is a settled position of law, right from the time specific performance decrees were granted by the Courts in equity, that a decree in a specific performance suit is only in the nature of a preliminary decree. With the decree, the Court does not become *functus officio*. The Court retains the power to rescind the decree or even extend the time granted, if sufficient reasons are set forth either by the plaintiff or by the defendants, as the case may be. (See, **Anand Narayan Shukla v. Jagat Dhari, 2026 INSC 463**).

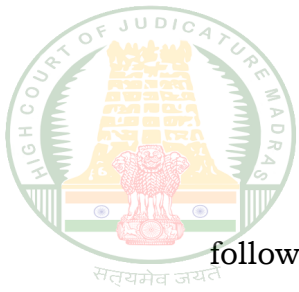
15.A plaintiff, no doubt, is entitled to move an application under Section 148 of the Code seeking extension of time. Such a petition is certainly maintainable. Yet, prior to passing of an order in the said application, the defendants are certainly entitled to be put on notice. This is because if the decree is treated as a preliminary decree, any



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extension would amount to a modification of the Clause made therein, and the defendants would have to be heard prior to any such modification.

16. On any application filed by a party, the Civil Rules of Practice and Circular Orders issued by this Court, in exercise of Article 227 of the Constitution of India r/w Section 122 of the Code of Civil Procedure, calls upon notice to be issued to the respondents in the application. This is clear from a perusal of Rule 31 of the aforesaid Rules. Under Rule 31(1), notice of an interlocutory application should be given to the other party not less than three days before the appointed date of hearing of the application. In case of urgency, the Court can reduce the said period. This is on account of the supervening clause found under Rule 31(1), which enables the Court to pass an order reducing or increasing the period of notice, depending upon the discretion exercised by it. In case, a party appears through a counsel, according to Rule 31(2), notice can be issued to the counsel who represents him. If the party has not engaged a counsel, under Rule 31(3), the notice has to be sent or delivered to the address of such party. The same procedure that is



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followed under Order V Rule 15 or Order V Rule 17 would have to necessarily be followed, even in the case of applications.

17.I hasten to add that the said procedure need not be followed in all circumstances, as there are certain cases, where notice can be dispensed with by the Court, by an order on a request of a party. The application under Section 148 does not fall under such a category. This is more so because of the enormous time which the plaintiff sought for extension and for deposit, that is from 19.12.2001 to 02.07.2011.

18.Apart from the aspect on mere violation of principles of natural justice, I would refer to Section 28 of the Specific Relief Act, 1963. Under Section 28, a right has been conferred on the parties to rescind the contract, in case default is shown with respect to a party who has got the benefit of the decree. Had the notice in the present application been ordered to the defendants, perhaps, they would have filed an application under Section 28 of the Act. Even if they were not interested in filing such an application, they could have still filed a counter, opposing the application for extension of time and got it dismissed. An application for extension of time to comply with the

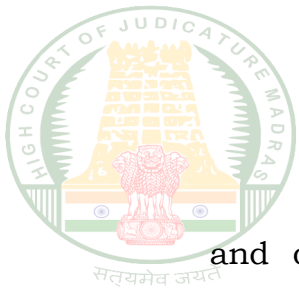


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decree is not to be ordered for the asking. Such an application requires a totally different treatment. While looking through the lens of Section 28, an order so passed must be a judicious one, considering the circumstances that have been urged by the plaintiff seeking indulgence of the Court. As pointed out in **Anand Narayan Shukla's case**, there should be a holistic examination. The trial court would have to consider, inter alia, the conduct of parties, the reasons for the delay and whether grant of compensation would be adequate.

19.Insofar as the plea of Mr.Mohamed Haneef that much water has passed on account of the decree is concerned, I have already pointed out that the parties have indulged in another round of litigation at the instance of a third party and the matter is now pending in second appeal in S.A.(MD) No.488 of 2024. The plaintiff has also not taken possession of the property. That being the situation, nothing much has happened, other than extension of time and the consequential deposit.

20.Mr.G.Sridharan pointed out that the plaintiff is an Advocate, who is aware of the position of law. It is not for me to give a finding on this aspect in this revision. It is for Mr.G.Sridharan to file a counter



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and oppose the application, bringing forth every defense that is available to him.

21.Furthermore, where vital rights regarding immovable property are involved, the learned Trial Judge is expected to give reasons in support of the order. A mere word that the plaintiff is '*permitted*' does not show any application of mind. The order cannot be called laconic. It is worse. It is a one word order.

22.In the light of the above discussions, the Civil Revision Petition succeeds in the following terms:-

i) The order passed by the learned Subordinate Judge at Palani in I.A.No.524 of 2011 in O.S.No.303 of 1996 dated 02.08.2011 is set aside.

ii) I.A.No.524 of 2011 will stand restored on to the file of the learned Principal Subordinate Judge at Palani.

iii) By consent of both the parties, the date of hearing is fixed as **03.08.2026**.

iv) Mr.G.Sridharan undertakes to file a counter in I.A.No.524 of 2011 on **03.08.2026**.



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v) In the event an application under Section 28 is filed by the defendants, the learned Trial Judge is requested to club that application along with I.A.No.524 of 2011 and pass a detailed and reasoned order in both the applications.

vi) The affidavit that has been filed by the plaintiff will not be amended by him. This is because the Court is deciding whether the reasons given by him in the year 2011 is satisfactory or not. No new facts should be introduced by way of an amendment application.

vii) The learned Trial Judge is requested to dispose of the application within a period of eight weeks from the date on which the counter is filed by the defendants to the time extension application.

No costs. Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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25.06.2026

To

The Subordinate Judge, Palani.



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V. LAKSHMINARAYANAN, J.

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