



C.R.P.(MD).No.617 of 2026

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2026

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(MD).No.617 of 2026

and

C.M.P.(MD).No.2869 of 2026

1.A.Kanagaraj

2.Venkatesan

3.Angammal

.. Petitioners/Petitioners/
Defendants

Vs.

A.Sethuramalingam

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, to set aside the fair and decretal order, dated 14.09.2023, passed in I.A.No.2 of 2023 in O.S.No.117 of 2021 on the file of the Subordinate Court, Periyakulam.

For Petitioners : Mr.K.Hemaraj

For Respondent : Mr.R.Shankar Ganesh

ORDER

Heard Mr.K.Hemaraj, learned counsel for the petitioners and Mr.R.Shankar Ganesh, learned counsel for the respondent.



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2. This revision challenges the order passed by the learned Subordinate Judge at Periyakulam in I.A.No.2 of 2023 in O.S.No.117 of 2021 dated 14.09.2023.

3. For the sake of convenience, the parties shall be referred to as their rank in the suit.

4. O.S.No.117 of 2021 is a suit for specific performance of an agreement of sale dated 31.10.2019. The plaintiff, alleging that he had performed all that he had to and that the defendants were evading the execution of the sale deed, presented the aforesaid suit. The suit was taken on file by the Subordinate Court at Periyakulam and summons were issued to the defendants. A detailed written statement was filed by the defendants resisting the claim of the plaintiff. On this basis, issues had been framed and the parties were pushed to trial.

5. The plaintiff entered the witness box and deposed in chief. Documents were marked. The matter was listed for cross-examination of the plaintiff. At that stage, the defendants did not appear before the Court nor did their counsel make any attempt to cross-examine the plaintiff. Consequently, the Court, left with no other option, set the defendants *ex parte* and decreed the suit as prayed for on 18.11.2022.



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6. On coming to know of the *ex parte* decree, the defendants filed an application in I.A.No.2 of 2023 before the Subordinate Court at Periyakulam, seeking to condone the delay of 133 days in filing the application under Order IX Rule 13 of Code of Civil Procedure. The reason given by the defendants for non-appearance on the date of hearing was that the first defendant, Mr.A.Kanagaraj, being a senior citizen, had been afflicted with jaundice and hence, could not appear before the Court. Anticipating that the Court may call upon him to produce the medical records, the defendants took a plea that the first defendant was taking traditional medicine as a cure for jaundice. It was also pleaded that the then counsel appearing for the defendants had not informed the defendants about the stage of the suit, which resulted in the *ex parte* decree. This application was taken on file in I.A.No.2 of 2023.

7. The plaintiff did not file a counter to the application, but orally opposed the same.

8. The learned Judge, considering the facts and circumstances of the case, ordered that a sum of Rs.4000/- be paid to the plaintiff and a sum of Rs.1000/- be paid to the Mediation Centre, Theni District. For compliance of the said condition, he granted time till 29.09.2023. The defendants did not pay the amount as directed by the Court. Consequently, the application came to be dismissed. Challenging the said order, the present revision.



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9. Mr.K.Hemaraj appearing for the petitioners/defendants urged that the counsel, who appeared for the petitioners in the condone delay application, did not inform them about the condition that had been imposed by the Court, which resulted in the dismissal of the application for non-payment of cost.

10. Per contra, Mr.R.Shankar Ganesh appearing for the respondent/plaintiff points out that, with the dismissal of the petition to condone the delay, the plaintiff had filed an application in E.P.No.11 of 2023 on the file of the learned Subordinate Judge at Periyakulam and had obtained orders for execution of the sale deed. After payment of due charges, also got the sale deed executed in his favour. He states, much water has flown after the order in I.A.No.2 of 2023 had been passed by the learned Trial Judge. As on today, the Execution Petition is posted for delivery of possession of the property. Hence, he states that the defendants have absolutely no bonafide in their case and their only intention is to drag on the proceedings, thereby, depriving the plaintiff of the fruits of the decree.

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



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12. The suit is one for specific performance of an immovable property.

Valuable rights of the parties are involved. For the default of the counsel, a party should not lose the vital rights he has over the property.

13. The Supreme Court in the case of **Rafiq and another Vs. Munshilal and another, AIR 1981 SC 1400**, pointed out that the negligence of a counsel should not be laid at the doors of the party. It was taking into consideration that position, the learned Subordinate Judge at Periyakulam had allowed the application to condone delay and had put the party on terms. Though a lifeline was granted to the defendants, they did not grab the same, which eventually led to the property slipping into the hands of the decree holder. If I were to extend the time to pay the cost as sought by the learned counsel for the petitioners, I would be forgetting the travails that the plaintiff has gone through and the stage in which the proceedings are so placed.

14. As rightly contended by the learned counsel for the respondent, today, the plaintiff has not only deposited the balance of sale consideration, but has also paid substantial amounts towards stamp duty and registration charges to the Government. If the time is extended and the decree is set aside, the plaintiff faces an uphill task of getting the amounts, which have been deposited to the State, refunded. It is no fault of the plaintiff that he had paid the amount. He had merely put the decree into execution. Hence,



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in order to balance the interest of both parties, the order passed by the learned Subordinate Judge at Periyakulam in I.A.No.2 of 2023 in O.S.No.117 of 2021 dated 14.09.2023 is modified in the following terms:

(i) The defendants shall pay an enhanced cost of Rs.10,000/- to the plaintiff.

(ii) In addition, the defendants shall deposit the entire amount that the plaintiff has borne towards registration and stamp duty charges to the credit of O.S.No.117 of 2021.

(iii) The payment of Rs.10,000/- as well as the deposit of the amount, which corresponds to the amount paid towards stamp duty and registration charges, shall be done within a period of five (5) weeks from today.

(iv) In case, the defendants default in payment of the aforesaid sums, the defendants will not be entitled to the benefits of this order. In other words, the Civil Revision Petition will stand dismissed without further notice to this Court.

(v) In case, the aforesaid conditions are complied with, the learned Subordinate Judge at Periyakulam shall keep the amount deposited towards stamp duty and registration charges in an interest bearing account. In the event, the suit is decreed, the defendants will be entitled to take refund of the amount. In the event, the suit is dismissed, the plaintiff will be entitled to the same.

(vi) The suit having progressed to the stage of trial and since five years lapsed, in case, the defendants comply with the aforesaid directions, the



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learned Subordinate Judge at Periyakulam is requested to apply the administrative directions of this Court with respect to suits pending for more than five years and pass orders in accordance with law.

15. This Civil Revision Petition is disposed of in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

04.03.2026

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To
The Subordinate Court, Periyakulam.



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V.LAKSHMINARAYANAN,J.

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