



C.R.P.(PD)(MD)No.2162 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(NPD)(MD)No.2162 of 2022
and C.M.P.(MD)No.10747 of 2022

Mabel Rose Bai

... Petitioner

Vs

J.Ajay

... Respondent

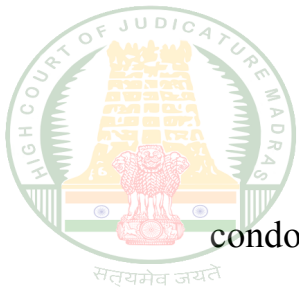
PRAYER: Civil Revision Petition filed under Section 115 of C.P.C., praying to set aside the fair and decretal order dated 21.01.2020, passed in I.A.No.796 of 2018 in O.S.No.22 of 2017, on the file of the learned Subordinate Court, Padmanabhapuram.

For Petitioner : Mr.C.Kishore

For Respondent : Mr.G.Aravindhan

ORDER

This Civil Revision Petition is filed challenging the order passed by the trial court dismissing the application filed by her seeking to



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condone the delay of 460 days in filing a petition to set aside the *ex parte* decree.

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2. The respondent herein filed a suit seeking specific performance of the agreement dated 24.11.2015. The suit was decreed *ex parte* on 02.06.2017. Thereafter, the respondent herein filed an Execution petition in E.P.No.38 of 2018. After receipt of notice in the execution petition, the petitioner/defendant in the suit filed an application seeking to set aside the *ex parte* decree along with a petition to condone the delay of 460 days. The said application was dismissed by the trial Court. Aggrieved by the same, the petitioner has come before this court.

3. The learned counsel appearing for the petitioner would submit that the suit summon has not been served on the petitioner and petitioner acquired knowledge about the *ex parte* decree passed against her only on receipt of notice in the execution proceedings. Therefore, the trial Court ought to have condoned the delay.

4. Since the service of suit summon has been denied by the petitioner, this Court called for the original records from the trial court.



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5. I perused the original records. It is seen from the records that the suit summon was received by the petitioner/ defendant on 07.02.2017. The process server of the trial Court also confirmed that she had personally served the petitioner on 07.02.2017 at about 10.00 am. It is also seen from the records that the suit summon was also served on the petitioner, through a registered post on 04.02.2017. The postal acknowledgement signed by the petitioner is also available in the records.

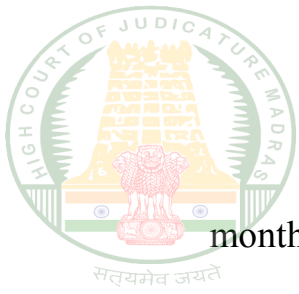
6. It is seen from the records that the petitioner received the suit summons by putting her full signature with the initial in the postal acknowledgement card and in the summon's copy of process server. In the affidavit filed by the petitioner seeking to condone the delay of 460 days in filing the petition to set aside the *ex parte* decree, in the first page of the affidavit, the petitioner put her full signature without initial. In the second page of the affidavit, she put her signature with initial. In the vakalat and the affidavit filed before this Court, the petitioner put her initial alone as 'MRB'. She has not put her full signature as found in the summon's copy, postal acknowledgement card and in the second page of



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the affidavit filed before the trial Court. Therefore, it is clear that the petitioner is in the habit of putting her signature in different form in different document. The petitioner is not in the habit of putting her signature consistently in one fashion. There is also a possibility of the petitioner putting her signature in a different form deliberately so as to confuse the Court. No other reliable document prior to service of summons containing admitted signature of petitioner filed before the Court. Taking into consideration the statement of the process server of the trial Court that the suit summon was served on the petitioner on 07.02.2017, as well as the fact that the petitioner had already been served through registered post on 04.02.2017, this Court has no hesitation in coming to the conclusion that suit summon was properly served on the petitioner. Therefore, the submission made by the learned counsel for the petitioner is not acceptable to this Court as the same is contrary to the records of the Court below.

7. Further, it is seen from the typed set of papers that the petitioner received notice in the execution proceedings as early as July 2018. However, the present application has been filed only on 06.10.2018. The petitioner failed to explain the delay of nearly two



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months in filing the application to set aside the *ex parte* decree, even after receiving notice in the execution proceedings. The Court below rightly appreciated all these facts and came to the conclusion that petitioner failed to explain the delay and dismissed the condone delay petition. I don't find any irrationality or illegality in the said order passed by the trial Court. Accordingly, the Civil Revision petition stands dismissed.

8. Taking into consideration the fact that the petitioner has filed this application with a false averments as if she has not received the suit summons and also the fact that she changed her signature in the proceedings before both the trial Court and also this Court, this Court is constrained to impose a costs of Rs.10,000/- on the petitioner and the same shall be paid to the District Legal Services Authority, Kanyakumari District within a period of four weeks from the date of receipt of copy of this order. In case the petitioner failed to comply with the conditions, the District Legal Services Authority shall take appropriate steps to recover the costs from the petitioner by initiating proceedings under revenue recovery Act. Consequently, connected miscellaneous petition is closed.



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NCC : Yes / No

Index : Yes / No

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To

1.The Subordinate Judge, Padmanabhapuram

2.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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