



CRP(MD). No.1378 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 10/03/2026

CORAM

THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN

CRP(MD). No.1378 of 2025

and

C.M.P(MD).Nos.7147 of 2025 and 981 of 2026

P.Manisundar,

... Petitioner

Vs

Murugan,

S/o.(Late) Rathinasamy Nadar,

... Respondent

PRAYER :- Civil Revision Petition filed under section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 11.03.2025 in I.A.No.3 of 2024 In I.A.No.2 of 2023 In O.S.No.27 of 2021 in the Court of the Sub Court, Theni District and allow this Civil Revision Petition.

For Petitioner : Mr.S.Vikram,

For Respondent : Mr.S.Vinayak



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ORDER

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Heard Mr.Vikram for the petitioner and Mr.Vinayak for the respondent.

2. The Civil Revision Petitioner is the defendant in the suit. For the sake of convenience, the parties shall be referred to according to their ranks in the suit.

3. This Civil Revision Petition challenges the order passed by the learned Subordinate Judge, Theni District, in I.A.No.3 of 2024 in I.A.No. 2 of 2023 in O.S.No.27 of 2021, dated 11.03.2025. By that order, the learned Subordinate Judge refused to condone the delay of 63 days in filing the application to set aside the ex-parte decree in I.A.No.2 of 2023.

4. The plaintiff and the defendant have entered into a registered agreement of sale on 20.12.2018. In terms of the agreement, the plaintiff paid a sum of Rs.3,00,000/-, leaving a balance of Rs.50,000/- to be paid. The pleading, that despite having made all the efforts to convert the sale agreement into a sale deed, the defendant was evading execution of the



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sale deed, the plaintiff presented O.S.No.27 of 2021 for specific performance. Though the suit was filed on 19.03.2020, it came to be numbered only in 2021.

5. Summons were served to the defendants. Despite opportunities, the defendants did not co-operate with the Court. Hence, they were set ex-parte on 20.09.2021. The matter was posted for filing of proof affidavit. The plaintiff presented his proof affidavit on 16.03.2022 and documents were marked. The matter was listed for hearing on 31.03.2022. On that day, the learned Subordinate Judge heard the arguments on the side of the plaintiff and reserved the matter for judgment. The learned Trial Judge passed a judgment on 21.04.2022 decreeing the suit as prayed for.

6. On coming to know of the ex-parte decree, the defendant presented I.A.No.2 of 2023 to condone the delay of 215 days in filing the application to set aside the ex-parte decree. On the day, when the matter was called for hearing, the defendant did not present himself in Court. Consequently, on 12.09.2023, the learned Judge dismissed I.A.No.2 of



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2023 for default. In order to restore this application, an application ought to have been filed within 30 days. The defendant did not to do so. An application had been filed with a delay of 63 days in I.A.No.3 of 2024 to restore I.A.No.2 of 2023. The learned Judge ordered notice in the application.

7. The plaintiff filed a detailed counter, bringing to the notice of this Court the dilatory tactics of the defendant in prosecuting the case.

8. Upon analysis of the affidavit and the averments in the petition, the learned Judge came to the conclusion that the application seeking condonation of delay was devoid of merits. Accordingly, he dismissed the petition. Hence, this revision.

9. I heard the arguments of both sides. I have gone through the records and applied my mind to the facts.

10. This is a suit for specific performance of a registered agreement of sale. It is the case of the defendant that the agreement had been entered, not for the purpose being an agreement to executing a sale



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deed, but only for a collateral purpose, that is to say for the security for the amount disbursed. As pointed out by Mr.Vikram that during the substantial portion of the suit, right from the time of numbering till the time of ex-parte decree, the country was impacted by COVID-19 pandemic. The same test which could be applied to a person during normal periods cannot be applied in this case, as people were more concerned with saving their lives rather than appearing before the Court and defending a litigation.

11. I have to note that the defendant, even post COVID-19, has not co-operated with the Court for the disposal of the suit and his application to set aside the ex-parte decree had been dismissed for default. He did not move to the Court immediately for restoration, but only after a delay of 63 days. In the mean time, the plaintiff had presented an execution petition in E.P.No.179 of 2022. He has also got a sale deed registered in his favour on 26.02.2025 in Document No.863 of 2026.

12. Even if I take the defendant's case at its highest, if the agreement is indeed found to be only for a collateral purpose, the



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defendant concedes that he has received a loan amount of Rs.3,00,000/- from the plaintiff. A mere imposition of costs would not serve the interests of justice. I also have to balance the interest of the defendant, who claims valuable agricultural property more than Rs.15,00,000/- is the subject matter of the litigation. When valuable rights of parties are involved, it requires a serious adjudication rather than one only on the basis of the fact that the defendant remained ex-parte. It has been pointed out by the Supreme Court in **N. Balakrishnan vs M. Krishnamurthy, (1998) 7 SCC 123** that while dealing with applications for condonation of the delay affecting vital rights of the parties, the Court should adopt a liberal approach.

13. Taking into consideration the overall circumstances, instead of prolonging the life of litigation, I am of the view that the ex-parte decree itself can be set aside, on the condition that the defendant deposits a sum of Rs.3,00,000/- within a period of four weeks from today.

14. In the light of the above discussion, this Civil Revision Petition is allowed on the following terms:



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(i) The defendant shall deposit a sum of Rs.3,00,000/- within a period of four weeks from today to the credit of O.S.No.27 of 2021 on the file of the Sub Court, Theni District.

(ii) On such deposit, the order in I.A.No.3 of 2024 dismissing the application to condone the delay in filing the application to restore I.A.No.2 of 2023 will stand allowed. The learned Subordinate Judge is requested to restore I.A.No.2 of 2023 and allow the same. Thereafter, I.A.No.2 of 2023 will also stand allowed and the delay of 215 days in filing the application under Order 9 Rule 13 will stand condoned.

(iii) The Subordinate Judge, thereafter will number the application under Order 9 Rule 13 and set aside the ex-parte decree passed on 21.04.2022 and allow the same.

(iv) Since the pleadings are already completed and issues have been framed, the suit must be listed for cross examination of P.W.1 forth with. The trial of the suit must commence with all possible expedition, as is required in terms of the amendment to the Specific Relief Act.



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(v) The learned Subordinate Judge is requested to give at least two effective dates of trial every week. In case the suit is decreed, the validity of sale deed executed by the Court on 26.02.2026 will stand confirmed. In the event of the suit being dismissed, the learned Trial Judge shall receive the statement of the cost incurred by the plaintiff to get the sale deed executed and incorporate it at the time of imposition of costs of the defendant.

15. The observations in this orders have been made solely for the purpose of disposing of the applications to condone delay, restore the matter and set aside the ex-parte decree. They shall not be construed, as if this Court has commented on the merits of the case. Consequently, connected miscellaneous petitions are closed. No Costs.

10.03.2026

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TO

The Sub Court, Theni District.

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V. LAKSHMINARAYANAN,J

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ORDER
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