



C.R.P.(PD)(MD)No.1200 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.06.2026

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

C.R.P.(PD)(MD)No.1200 of 2022
and C.M.P.(MD)No.4893 of 2022

Mariappan

... Petitioner

Vs

Jebamani

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 20.04.2022 in I.A.No.2 of 2022 in O.S.No.88 of 2017 on the file of the Principal Court, Tenkasi.

For Petitioner : Mr.Ananth C.Rajesh

For Respondent : Mr.R.Iyappan

ORDER

This Civil Revision Petition has been filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking to condone the delay of 326 days in filing the petition



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to set aside the *ex parte* decree passed against him.

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2. The respondent herein filed a suit seeking recovery of money based on pro-note. In the suit, an *ex parte* decree was passed against the defendant on 03.04.2019. Thereafter, the petitioner filed an application to set aside the *ex parte* decree on 24.09.2021 with the delay of 326 days. He also filed an application seeking to condone the delay in filing the petition to set aside the *ex parte* decree. By the impugned order, the trial Court dismissed the condone delay petition filed by the petitioner. Aggrieved by the same, he has come before this Court.

3. The learned counsel appearing for the petitioner would contend that the suit summons were not served on the petitioner and hence, he was not aware of the legal proceedings against him. He further submitted that the averment in the affidavit of the petitioner that summons were not served on him was not properly considered by the trial Court and hence, the impugned order is liable to be set aside.

4. This Court heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.



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5. On a perusal of the records, it is seen that the only reason given by the petitioner in the affidavit filed in support of the condone delay petition is that he was not served with summons as he was out of his residence in connection with his work as a driver of heavy vehicles. Ex.R1 is the acknowledgment signed by the wife of the petitioner for having received the suit summon. Ex.R2 is the postal acknowledgement card signed by the petitioner himself for having received the notice in the interlocutory application in I.A.No.233/2017. Ex.R3 is the acknowledgement card signed by the petitioner for having received the Court notice in I.A.No.233/2017. The trial Court taking into consideration all these material evidence available on record came to a conclusion that the suit summon was served on the petitioner and he had knowledge about the suit proceedings.

6. As per Order V Rule 15 of CPC, service on any adult member of the family is also proper service in case there is no likelihood of finding the defendant within a reasonable time. It is settled law that even if suit summons were not served, if the defendant had a knowledge about the suit proceedings, the same is sufficient. In the case on hand,



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the petitioner's wife received Court summon. The summon sent through registered post was received by the petitioner himself. Further, the petitioner/defendant received the Court notice as well as registered notice in I.A.No.233 of 2017. Therefore, there is ample evidence available on record to suggest that the petitioner/defendant had knowledge of suit proceedings. Further it is not the case of the petitioner that his relationship with his wife got strained and therefore, she failed to inform him about the service of summons. In the absence of any such plea by the petitioner, this Court presumes that the service was properly effected on adult member of the family and the petitioner had knowledge of the suit proceedings. The trial Court rightly came to the conclusion that the petitioner failed to establish non service of summons. The averment in the condone delay affidavit as if suit summon was not served on him is nothing but false, in the light of the documentary evidence marked as Exs.R1 to R3.

7. In the light of the above discussions, I do not find anything to interfere with the impugned order in this Revision and therefore, the Civil Revision Petition stands dismissed. There shall be order as to costs. Consequently, connected miscellaneous petition is closed.



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vsm

NCC : Yes / No

Index : Yes / No

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To

- 1.The Principal Court, Tenkasi.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

vsm

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