

C.R.P.(MD) No.3726 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.06.2026

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

**C.R.P.(MD) No.3726 of 2025
and
CMP(MD) No.19648 of 2025**

P.Ananthi

... Petitioner

vs.

R.P.Ganesan

... Respondent

PRAYER: Petition filed under Section 115 of CPC., to set aside the fair and decreetal order passed in I.A.No.1 of 2023 in O.S.No.101 of 2017 on the file of the Principal District Court, Dindigul dated 25.07.2025.

For Petitioner : Mr.R.Iyappan

For Respondent : Mr.S.Sankar

ORDER

The defendant is the civil revision petitioner.

2.O.S.No.101 of 2017 was presented by the plaintiff seeking specific performance of an agreement of sale dated 05.06.2015.



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3.It is the specific case of the plaintiff that a registered agreement of sale was entered into between the parties for the sale of the suit schedule mentioned property. An advance of Rs.13,00,000/- had been paid, leaving a balance of Rs.12,00,000/- to be paid by the plaintiff. The overall sale consideration was for Rs.25,00,000/-.

4.The plaintiff urged that on 04.04.2016, 22.04.2016 and 02.05.2016, he approached the defendant to execute the sale deed. The defendant evaded the execution. Consequently, the plaintiff issued a notice on 01.06.2016, which the defendant had refused to receive. Subsequently, a fresh notice was issued on 13.06.2016 and as the demand remained unsatisfied, the plaintiff presented the suit for the aforesaid relief.

5.The defendant was served with summons. She did not file her written statement. Consequently, she was called absent and set *ex parte*. The Trial Court granted a decree for specific performance on 27.03.2018.

6.To set aside the *ex parte* decree, the defendant filed an application. As it was not filed within the period of limitation, she filed



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I.A.No.1 of 2023 to condone the delay of 1907 days in filing the aforesaid application. Along with the condone delay application, she has also filed her written statement, in order to prove her *bona fide*.

7.It is the case of the defendant that she had engaged a lawyer to contest the suit. However, she had fallen down and suffered an accident, on account of which she was not in a position to communicate with her lawyer and give him the necessary instructions. She further pleaded that her lawyer, Mr.V.Jebaraj, passed away. On these twin grounds, she pleaded that the delay may be condoned.

8.The learned Judge ordered notice in this application to the plaintiff. The plaintiff filed a detailed counter. According to the plaintiff, the alleged sickness of the defendant is a false one. He further urged that the reason given that the advocate passed away is also a false one. According to him, the counsel for the defendant passed away sometime in 2023 and taking advantage of his death, the defendant is attempting to get the delay condoned.



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9.The defendant entered the witness box and examined herself as P.W1. She also examined another witness as P.W2. Both of them were subjected to cross-examination. The defendant marked Ex.P1 to Ex.P3. On the side of the plaintiff, the plaintiff entered the witness box as R.W1. He marked Ex.R1 to Ex.R4.

10.On the basis of the oral and documentary evidences presented before the Trial Court, the learned Trial Judge was not convinced with the reasons given by the defendant and consequently, dismissed the said application. Aggrieved by the same, the present revision.

11.Heard Mr.R.Iyappan for the civil revision petitioner and Mr.S.Sankar for the respondent.

12.The learned counsel for either side reiterated the contentions that they had placed before the Trial Court.

13.Here is a suit for specific performance. Vital rights over an immovable property is involved. The plaintiff claims that he has spent a sum of Rs.25,00,000/- in all, namely, Rs.13,00,000/- paid as



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advance and Rs.12,00,000/- deposited in the court. Earlier, between the plaintiff and the defendant, there was a relationship of lessor and lessee. The plaintiff continues to be in possession, pursuant to the decree obtained by him on 27.03.2018.

14.A perusal of Ex.P1, filed during the course of this proceeding, indicates that the defendant had suffered serious injuries, on account of which, she had been bedridden. She has entered the witness box and spoken in support of her case. In addition, she has also examined PW.2 to substantiate the pleas raised by her.

15.The reason for the defendant having been set *ex parte* is on account of non filing of her written statement. Unless and until the defendant is hale and hearty, she would not be in a position to instruct her counsel. It would be rather harsh to expect a party, who is sick, to approach the counsel and give him instructions to file a written statement. There is no doubt that there is a laxity on the part of the defendant. Such laxity is not so large that it should end at the right of the plaintiff over an immovable property. Being an application under Section 5 of the Limitation Act, 1963, I am not willing to go into the plea of the plaintiff that he had received a sum of Rs.1,00,000/-



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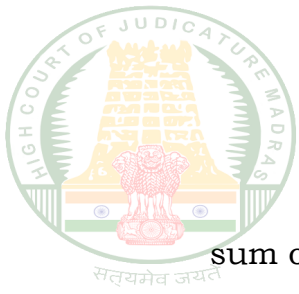
for the purpose of which he had entered into an agreement of sale for a sum of Rs.25,00,000/-. It is for the learned Trial Judge to decide after the evidences are recorded.

16.I am not convinced with the other reason trotted out by the defendant that her advocate had passed away and therefore, she was not in a position to appear before the court. This is on account of the fact, as rightly contended by Mr.S.Sankar that the death occurred five years after the *ex parte* decree.

17.As the plaintiff has suffered financially, it is the duty of the defendant to make good the loss in addition to the deposit that is to be directed under this order. That would balance the interests of the plaintiff and the defendant. It is not as if the delay is so large, the cost cannot be imposed for the purpose of condonation of delay.

18.In the light of the above discussions, this Civil Revision Petition stands ordered in the following terms:-

i) The order passed by the learned Principal District Judge, Dindigul, in I.A.No.1 of 2023 in O.S.No.101 of 2017 dated 25.07.2025 is set aside on the condition that the plaintiff will forthwith deposit a



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sum of Rs.5,00,000/- on or before **22.06.2026**.

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ii) The plaintiff shall deposit a further amount of Rs.7,00,000/- on or before **14.07.2026**.

iii) The defendant shall pay a sum of Rs.25,000/- to the plaintiff, as costs, on or before **30.06.2026**.

iv) In default of any one of the aforesaid clauses, this Civil Revision Petition will stand dismissed without further notice to this court.

v) In the event the defendant complies with the conditions, the learned Judge is requested to allow the application under Order 9 Rule 13, receive the written statement and dispose of the suit within a period of six months from the date of setting aside of the *ex parte* decree.

vi) As the plaintiff is in possession of the property, till the disposal of the suit, the defendant will not initiate any proceedings, to dispossess him.

Consequently, connected Miscellaneous Petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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The Principal District Judge, Dindigul



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V. LAKSHMINARAYANAN, J.

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