

C.M.P.(MD).No.8262 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.P(MD)No.8262 of 2025
and
CRP (MD) SR No.28104 of 2025

V.Jayaraj

... Petitioner(s)

Vs.

1. R.Madhavi

V.Punithavalli (Died)
V.Selvaraj (Died)

2. E.Vaijyanthi

3. S.Vaitheki

4. R.Mythili

5. S.Kanchana

6. S.Rajarajan

7. S.Vandhana

... Respondents

PRAYER: Civil Miscellaneous Petition filed under Section 5 of the Limitation Act to condone the delay of 17 days in filing the Civil Revision Petition.



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For Petitioner : Mr.D.Srinivasaragavan
For Respondents : Mr.C.S.Ravichandran
for R1 to R4
R5 to R7 – Notice Unserved

ORDER

The present Miscellaneous Petition has been filed to condone the delay of 17 days in filing the Civil Revision Petition.

2. The petitioner is a third defendant in O.S.No.161 of 2008, which was filed by the first respondent for partition and other consequential reliefs against the other respondents, including the petitioner. An exparte order was passed as against the petitioner/third defendant vide order dated 17.11.2017. Since the petitioner is a green card holder, who is permanently residing in the United State of America was unable to communicate with his advocate frequently. Furthermore, he is suffering from a heart disease, which prevented him from appearing before the trial Court. Accordingly, the petitioner filed a petition to condone the delay of 2434 days in setting aside the exparte order. However, the said petition was dismissed. Challenging the same, the present civil revision petition has been filed by the petitioner.



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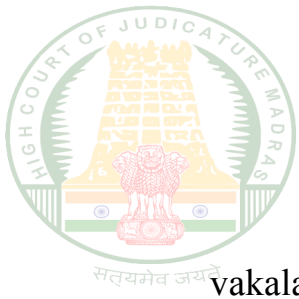
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3. The learned counsel for the petitioner would submit that normally, the trial Court shows some leniency while dealing with condone delay petitions, however, the trial Court without showing any leniency, dismissed the condone delay petition and hence, aggrieved by the same, the petitioner has file the present civil revision petition.

4. This Court has repeatedly adjourned the matter to complete the service of summons on the respondents 5 to 7, however, till date the summons have not been served. Considering the pendency of the civil revision petition, it is necessary in order to ascertain whether there is any merit in entertaining the civil revision petition.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. A perusal of the records reveals that admittedly, the petitioner is the third defendant in O.S.No.161 of 2008. It is an equally undisputed fact that the initial notice was served on the petitioner on 20.12.2008. Thereafter, the petitioner engaged one Arumugasamy as counsel and the counsel filed a



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vakalat on 07.01.2009. The suit was initially adjourned for a period of two years for filing a written statement on behalf of the petitioner and finally, an exparte order was passed on 19.07.2010. After contesting in respect of other respondents, a preliminary decree was passed on 17.11.2017. Thereafter, the first respondent/plaintiff filed I.A.No.82 of 2019 for passing the final decree which was subsequently re-numbered as I.A.No.2 of 2019. In the final decree proceedings, the private notice was ordered to be served on the petitioner and the same was served on 16.09.2019. The petitioner was given an opportunity to file a counter in the final decree proceedings. However, the petitioner again failed to file a counter, resulting in the final decree being passed on 24.10.2019. After the final decree passed, the petitioner sought to set aside the exparte decree and filed a condone delay petition in the year 2022 with the delay of 2434 days.

7. Admittedly, the petitioner had already received notice in the suit as well as the final decree proceeding and he engaged counsel. Despite this, he did not file a written statement or counter. Therefore, the trial Court passed the exparte order since the petitioner did not approach the trial Court with the clean hands. Consequently, the trial Court refused to condone the



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delay, which need not be interfered with by this Court.

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8. Accordingly, this Civil Miscellaneous Petition stands dismissed. Consequently, the Civil Revision Petition stands dismissed at the SR stage itself. There shall be no order as to costs.

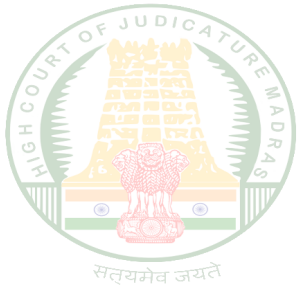
06.08.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
PKN

To

1. The Additional District Court,
Thanjavur Fast Track, Kumbakonam.

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



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M.DHANDAPANI,J.

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