



C.R.P.(MD)No.1971 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2026

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

C.R.P.(MD)No.1971 of 2022

Rajasingh

... Petitioner

vs.

Mahalingam

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, to set aside the fair and decretal order dated 15.07.2022 passed in I.A.No.329 of 2018 in O.S.No.20 of 2016 on the file of the Sub Court, Ambasamudram.

For Petitioner : Mr.B.Azhagesh
For Mr.Vignesh

For Respondent : Mr.A.Balakrishnan
For Mr.K.P.Narayana Kumar

ORDER

Heard Mr.B.Azhagesh representing Mr.Vignesh for the Civil Revision Petitioner and Mr.A.Balakrishnan representing Mr.K.P.Narayana Kumar for the Respondent.



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2. The defendant in a suit for specific performance is the civil revision petitioner. His application to condone the delay of 508 days to set aside the ex-parte decree dated 29.09.2016 came to be dismissed. Hence, the revision.

3. O.S.No.20 of 2016 is a suit for specific performance of an agreement of sale said to have been entered into between the plaintiff and the defendant on 10.03.2014. The plaintiff called upon the defendant to execute the sale deed in terms of the aforesaid agreement on 14.03.2015. Since the defendant did not execute the sale deed, the plaintiff presented the suit.

4. It is the case of the plaintiff that the sale agreement was for a sum of Rs.3,25,000/-, and that he had paid a sum of Rs.3,00,000/- on 10.03.2014 itself, leaving a balance of Rs.25,000/-, which was to be paid within a period of one year from the date of the agreement. The defendant was served with summons. However, he did not file a written statement. Consequently, he was set ex parte and the suit was decreed as prayed for.



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5. Pleading that he had left his village at Ambasamudram and shifted to the neighbouring State of Kerala for the purpose of vocation resulting in his non-appearance before the Court, the defendant took out an application to condone the delay of 508 days in filing the application under Order IX Rule 13 of CPC. He pleaded that he came to know about the decree only when the notice was served on him in the execution petition filed to execute the decree. Pleading that the delay was neither wilful nor wanton, he came forward with the aforesaid petition. This application was numbered as I.A.No.329 of 2018.

6. Notice was ordered in the application. The plaintiff filed a detailed counter. He opposed the application for condonation of delay tooth and nail. He pointed out that the defendant had entered appearance in the execution petition and that petitions under Section 5 of the Limitation Act and Order IX Rule 13 CPC were filed only 125 days thereafter. He also alleged that there were absolutely no bona fide in the application and that the same deserved to be dismissed.

7. The learned Subordinate Judge at Ambasamudram dismissed the application, holding that the petitioner had not made out sufficient cause. The learned Judge also found fault with the



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defendant for not having come forward with the application immediately after being served in the execution proceedings.

Aggrieved, the defendant filed the present Civil Revision Petition.

8. The learned counsel reiterated the contentions they had raised before the Court below. In addition, the learned counsel for the defendant submitted that it was not the intention of the defendant to delay the proceedings and that he had filed the written statement along with the petitions to condone the delay and to set aside the ex parte decree in order to establish his bonafide. He further submitted that the defendant was willing to pay reasonable costs in the event this Court decides to condone the delay.

9. *Per contra*, Mr.A.Balakrishnan urged that much water had passed after the ex parte decree. The plaintiff, as the decree holder, had presented the execution petition, got the sale deed registered in his favour. He asserts that he had taken possession of the property, pulled down the old superstructure, and had put up a new one. In response, the learned counsel for the defendant did not dispute the execution of the sale deed, but rejected the contention that possession has been taken. According to him, only an execution petition for



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registration of the sale deed had been presented, and no delivery petition had been filed.

10. I have carefully considered the submissions of both sides and I have gone through the records.

11. Here is a case where an exparte decree for specific performance of an agreement of sale relating to an immovable property is sought to be set aside. The case concerns valuable rights over an immovable property. The defendant pleads that he had left his village and gone to the neighbouring state of Kerala to eke out his livelihood. Such movement across borders is not uncommon in the district of Tirunelveli. When a person is searching for work to sustain himself, one cannot expect him to be present before the Court at all points of time. Unless and until he secures a livelihood, he would not be in a position to generate income for the purpose of defending the litigation.

12. Furthermore, the delay is not enormous. Considering that the suit relates to an immovable property, and as a sufficient cause has been made out, I am inclined to condone the delay. However, I must also take into consideration the plea of Mr.Balakrishnan, who



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points out that he had incurred substantial expenses in getting the sale deed registered, as well as the additional expenses incurred in executing the decree. This aspect can be taken note of by this Court while imposing conditions. The rights of a party should not be sacrificed on the technical ground of limitation.

13. In the light of the above discussions, this Court passes the following directions:

(i) The order passed by the learned Subordinate Judge at Ambasamudram in I.A.No.329 of 2018 in O.S.No.20 of 2016, dated 15.07.2022, is set aside on the condition that the petitioner/defendant shall pay a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) as costs to the plaintiff on or before **15.05.2026**.

(ii) The amount of Rs.75,000/- includes the amount incurred by the plaintiff towards registration of the sale deed.

(iii) In the event of failure to pay the said amount, the Civil Revision Petition shall stand dismissed without further notice to this Court.

(iv) If the costs are paid, the learned Subordinate Judge at Ambasamudram shall number the application under Order IX Rule 13 CPC and allow the same on or before **05.06.2026**.



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(v) Upon allowing the same, the learned Judge shall receive the written statement filed by the defendant, along with Section 5 application and proceed further with the trial.

(vi) If delivery has already been taken, the same shall be subject to the result of the suit. I am conscious of the principle that, upon the decree being set aside, *ex debito justitiae*, restitution has to be ordered. However, since the defendant has brought about the present situation upon himself, he shall await the result of the suit.

14. In view of the above, the Civil Revision Petition stands **allowed.**

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Nsr

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To:

The Sub Court, Ambasamudram.



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V.LAKSHMINARAYANAN, J.

Nsr

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