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C.M.P No.21781 of 2026
in
S.A.No.749 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

CMP No.21781 of 2026

in

S.A. No.749 of 2012

1. Anand
(died)
2. Krishnaswamy Reddiar Educational Trust
Rep by its Managing Trustee
Dr.K.Rajendiran,
S/o.Krishnasamy Reddiar,
No.11/6,
South Kavarai Street,
Manjakuppam,
Cuddalore - 1.
3. K.N.Gnanasundari
M/o.late Anand,
No.11/6, South Kaveri Street,
Manjakuppam,
Cuddalore - 1.

...Petitioners/Appellants

Vs

1. Annammal Tamilarasi
D/o. Cecil Deframary,
Rep. by her Power Agent
Jagadeesan,
S/o.Govindha Reddiar,
No.36, ALC Campus,
Cuddalore – 1.



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2. Dhanalakshmi Ammal
W/o.Narayanasamy Naidu,
Nellikuppam Main Road,
Vilvarayanatham,
Cuddalore – 1.
3. P.A.Sundarajan,
S/o.Perumal,
No.41,
VOC Street,
Pondicherry.
4. Chakrapani,
S/o.Arunachalam,
No.12,
Saraswathi Nagar,
Thirupapuliyur,
Cuddalore.
5. Thilagavadhi
W/o.Rajagopal,
No.19-A, Sannathi Street,
Thirupapuliyur,
Cuddalore.
6. Karuppaiah,
S/o.Palaniyappa Chetty,
No.39, Karpagam Nagar,
K.Pudur,
Cuddalore.
7. Rajendra Prabhu,
S/o.Sundaram,
No.79,
Seetharam Nagar,
Cuddalore - 1.



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8. Nagammai
W/o.Kumarappa Chetty,
No.11/15, Beach Road,
Pudupalayam,
Cuddalore – 1.
9. Devanai
W/o.Arumugham
No.11/15, Beach Road,
Pudupalayam,
Cuddalore – 1.
- 10.R.Bhuvaneshwari
W/o. late Anand,
No.41, Sowdambigai Nagar,
Thirupapuliyur,
Cuddalore.
- 11.Minor A.Gokulakrishnan
S/o. late Anand
Rep by Mother and next friend
R.Bhuvaneshwari
No.41, Sowdambigai Nagar,
Thirupapuliyur,
Cuddalore.

...Respondents/
Respondents

Prayer : Civil Miscellaneous Petition filed under Order XLI Rule 19 read with Section 151 of CPC, to set aside the order of dismissal dated 04.06.2026 in S.A. No.749 of 2012 as against the 2nd, 3rd, 5th and 6th Respondents and restore the Second Appeal as against the 2nd, 3rd, 5th and 6th respondents in S.A. No.749 of 2012.



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For Petitioner(s): Mr.M.Sivavarthanan

For Respondent(s): Mr.R.Rajavelavan
for R1

ORDER

This petition has been filed by the petitioners/appellants to set aside the dismissal order passed by this Court on 04.06.2026 in S.A.No.749 of 2012 as against the respondent Nos. 2, 3, 5 and 6 and restore the Second Appeal as against the respondent Nos.2, 3, 5 and 6 in S.A.No.749 of 2012.

2 (a). According to the petitioners/appellants, this Court directed the issuance of fresh notice to respondent Nos. 2, 3, 5, 6 and 10 through Court and Post within seven working days through an order dated 07.04.2026. Batta was also paid along with a Memo stating that respondent No.10 had died. The said Batta has been filed within time granted by the Court.



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(b). However, the learned counsel for the petitioners inadvertently

failed to notice that the Postal Batta was also required to be filed, and the Postal Batta alone was not filed. While so, when the matter was taken up for hearing on 04.06.2026, this Court dismissed the Second Appeal.

(c) Already, the Batta was paid, but the Postal Batta alone was not paid. Therefore, the failure on the part of the learned counsel was neither wilful nor wanton to pay the Postal Batta. Hence, the petitioners have filed this petition to restore the appeal, which was dismissed as against the 2, 3, 5 and 6 respondents.

3 (a). The other side has filed a counter stating that this Court had specifically directed the petitioners/appellants to issue fresh notice to respondent Nos. 2, 3, 5, 6 and 10 through Court and Post within seven working days. Though a Memo was filed and Batta was paid, the petitioners failed to comply with the order fully, as the Postal Batta was not paid.



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(b). The plea taken by the petitioners, as the omission was due to the inadvertence of their counsel, is an afterthought, and the same is not a sufficient cause. The petitioners cannot put the burden of the procedural default entirely on the learned counsel.

(c) The said respondents remained *ex parte* throughout the suit, first appeal and second appeal. Therefore, the petitioners were well aware of the position, yet they failed to prosecute the appeal diligently. Therefore, the reasons stated by the petitioners are not acceptable, and the respondents have prayed for dismissal of the petition.

4. This Court heard both sides and perused the records.

5. Though the respondents filed a counter, contesting the petition and denying the averments made in the affidavit, from the records, it is seen that the petitioners have paid Batta but not paid the Postal Batta. For that reason alone, the appeal was dismissed as against the respondents 2, 3, 5 and 6. By allowing this petition, no prejudice would be caused to the



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other side. Therefore, in the interest of justice and in order to give a fair chance to the petitioners to serve notice to the respondents, it is appropriate to allow this application.

6. Accordingly, this petition is allowed. The order passed by this Court dated 04.06.2026 by dismissing the Second Appeal as against the respondent Nos.2, 3, 5, and 6 is set aside, and the Second Appeal i.e, S.A.No.21781 of 2026 is restored.

19-08-2026
(1/2)

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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