

C.M.A(MD)No.387 of 2026

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.06.2026

Pronounced on : 25.06.2026

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.387 of 2026
and
C.M.P.(MD)No.3681 of 2026

Muthuramalingam

: Appellant

Vs.

Ramamoorthy

: Respondent

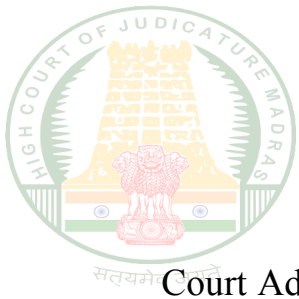
PRAYER:- Civil Miscellaneous Appeal filed under Order XLIII Rule 1 (d) of code of Civil Procedure, against the fair and decreetal order, dated 20.01.2026 passed in I.A.No.5 of 2025 in O.S.No.250 of 2023 on the file of the Additional District Court, Aruppukottai.

For Appellant : Mr.I.Suthakaran,

For Respondent : Mr.M.Thirunavukkarasu.

J U D G M E N T

The Civil Miscellaneous Appeal is directed against the order passed in I.A.No.5 of 2025 in O.S.No.250 of 2023, dated 20.01.2026, on the file of the



C.M.A(MD)No.387 of 2026

WEB COPY

Court Additional District Court, Aruppukottai, in dismissing the petition filed under Order IX Rule 13 of Code of Civil Procedure.

2. The appellant is the defendant in the suit. The respondent/plaintiff filed a suit in O.S.No.250 of 2023, claiming the relief of specific performance of the sale agreement, dated 18.05.2022 and the same was pending on the file of the Additional District Court, Aruppukottai.

3. The appellant/defendant, after receipt of summons, entered into appearance and since he has not filed the written statement, he was set ex-parte and hence, the defendant filed an application in I.A.No.1 of 2024 for setting aside the ex-parte order. Subsequently, the said petition in I.A.No.1 of 2024 was dismissed for default and an ex-parte decree came to be passed on 06.08.2024.

4. It is not in dispute that the respondent/plaintiff has laid the execution petition in E.P.No.146 of 2024, to execute the sale deed in pursuance of the decree, dated 06.08.2024. It is also not in dispute that the appellant/defendant filed an application under Section 5 of Limitation Act, in I.A.No.4 of 2025, to



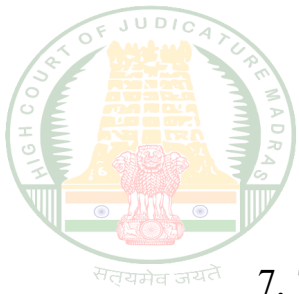
C.M.A(MD)No.387 of 2026

WEB COPY

condone the delay of 360 days in filing the petition for setting aside the ex-parte decree, dated 06.08.2024 and the petition filed under Order IX Rule 13 C.P.C., in I.A.No.5 of 2025 to set aside the ex-parte decree.

5. The learned Additional District Judge, Aruppukottai, after enquiry in both petitions in I.A.No.4 of 2025 and I.A.No.5 of 2025, passed separate orders on 21.01.2026, dismissing both the petitions. Challenging the dismissal of the petition in I.A.No.4 of 2025 filed under Section 5 of Limitation Act, the defendant preferred a revision in C.R.P.(MD)No.786 of 2026 and challenging the dismissal of the petition in I.A.No.5 of 20205, filed under Order IX Rule 13 of C.P.C., preferred the present Civil Miscellaneous Appeal.

6. The learned counsel for the appellant/defendant would submit that the learned Judge of this Court has allowed the revision vide order, dated 06.04.2026, in C.R.P.(MD)No.786 of 2026, imposing cost of Rs.30,000/- and that the appellant has already paid the cost to the respondent/plaintiff on 20.04.2026 and also filed a memo to the said effect.



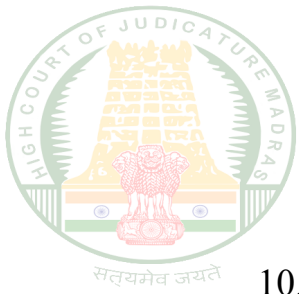
C.M.A(MD)No.387 of 2026

WEB COPY

7. The learned counsel for the respondent would submit that they have received the cost of Rs.30,000/- imposed in the order passed in C.R.P(MD) No.786 of 2026.

8. The appellant, in the affidavit filed in support of the petition filed under Order IX Rule 13 of C.P.C., has stated that he was suffering from jaundice and hence, he was taking country treatment and that therefore, he could not appear before this Court for the enquiry in I.A.No.1 of 2024 and that his non-participation is neither willful nor wanton and that since the defendant has a good chance to defend the suit for specific performance, ex-parte decree may be set aside.

9. The respondent/plaintiff filed a counter statement raising objections. When the above matter is taken up for final disposal, the learned counsel for the appellant would submit that since the revision was already allowed and thereby, the delay in filing the petition for setting aside the ex-parte decree was condoned, the respondent/plaintiff cannot be allowed to raise any objection to the petition for setting aside the ex-parte decree and that therefore, the appeal may be allowed.



C.M.A(MD)No.387 of 2026

WEB COPY

10. The Hon'ble Supreme Court in ***C.Prabhakar Rao and Another vs Sama Mahipal Reddy and Another*** reported in ***2025 SCC Online 495***, has specifically held that the scope of a petition filed under Section 5 of Limitation Act and that of an application filed under Order IX Rule 13 of C.P.C., are entirely distinct; that the adjudication and determination of both proceedings are independent of each other; that the remedies available against the orders passed therein are also separate and independent; and that one remedy does not subsume the other, each being required to be pursued in accordance with law.

11. In view of the above settled legal position, the contention of the appellant that, since the application filed under Section 5 of the Limitation Act has already been allowed, the present appeal has to be automatically allowed, cannot be legally sustained. At the same time, though the respondent/plaintiff, in the counter affidavit filed before the trial Court, had raised objections to the application under Order IX Rule 13 CPC and the learned counsel for the respondent reiterated the same before this Court, no specific or serious objection was raised. On the other hand, the learned counsel fairly submitted that the plaintiff had already received the costs of Rs.30,000/- awarded while allowing the application under Section 5 of the Limitation Act.



C.M.A(MD)No.387 of 2026

WEB COPY

12. Considering the entire facts and circumstances of the case, the submissions made on either side and the absence of any serious prejudice to the respondent/plaintiff, this Court is of the view that the appellant/defendant should be afforded an opportunity to defend the suit on merits and for that purpose, the ex-parte decree is liable to be set aside.

13. In the result, the Civil Miscellaneous Appeal is allowed and the impugned order passed in I.A.No.5 of 2025 in O.S.No.250 of 2023, dated 20.01.2026 on the file of the Additional District Court, Aruppukottai, is set aside and the petition in I.A.No.5 of 2025 filed under Order IX Rule 13 is allowed. The parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

25.06.2026

NCC : Yes/No

Index : Yes/No

Internet : Yes/No
das



WEB COPY



C.M.A(MD)No.387 of 2026

To

1.The Additional District Court, Aruppukottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.387 of 2026

K.MURALI SHANKAR,J.

das

Pre-delivery order made in
C.M.A(MD)No.387 of 2026
and
C.M.P.(MD)No.3681 of 2026

25.06.2026