

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 04TH DAY OF SEPTEMBER 2018

THE HON'BLE DR.JUSTICE ANITA SUMANTH

A.No.6456 of 2018

in

C.S.NO.323 OF 2012

1.S.Kumar,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

2.Mrs.K.Rajeswari,  
Old Door No.13, new Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

3.K.Anandha Saravanan,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

4.K.Anandha Subramanian,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope,  
Chennai 600 001

...Plaintiffs

-vs-

1.B.P.Suresh,  
Old Door No.19,  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

2.Mrs.S.Surya Prabha,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

3.Mrs.Jesarammali,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

4.Padaga Lingam,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

5.Kannan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

6.Santhakumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

7.Loganathan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

8.Mani,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

9.Munniya,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

10.Kannan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

11.Subramaniam,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

12.Aravind Kumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

13.Srinivasan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

14.Mrs.Sivaranjani,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

15.Raja,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

16.C.M.Kumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

17.Na.Ka.Sekar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

18.Jothy Kumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

19.Vijayakumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

20.Ravanaiya,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

21.Murugesan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

22.Janakiraman,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

23.Balasundarem,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

24. Shivaji Proprietor of Silver  
Ornament Works  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

25. Aasai Proprietor of Screen Printing  
Works  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

26. Raja, Proprietor of Book Binding  
Works  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

27. The Corporation of Madras  
Rep. by its Commissioner,  
Rippon Buildings,  
Chennai 600 003 ...Defendants

**A.No.6456 of 2018**

1. Kannan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

2. Srinivasan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

3. Murugesan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

...Applicants 1 to 3 / Defendant 10,13, & 21  
vs

1.S.Kumar,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

2.Mrs.K.Rajeswari,  
Old Door No.13, new Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

3.K.Anandha Saravanan,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope, Chennai 600 001

4.K.Anandha Subramanian,  
Old Door No.13, New Door No.27  
Second Floor,  
Subbarayalu Street  
Kondithope,  
Chennai 600 001

...Respondents 1 to 4/Plaintiffs 1 to 4

5.B.P.Suresh,  
Old Door No.19,  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

6.Mrs.S.Surya Prabha,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
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Kondithope, Chennai 600 001

7.Mrs.Jesarammali,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

9.Kannan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

10.Santhakumar,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

11.Loganathan,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
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Kondithope, Chennai 600 001

12.Mani,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
Venkataramiyer Street  
Kondithope, Chennai 600 001

13.Munniya,  
Older Door No.19  
Old Door No.49,  
New Door No.28  
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14.Subramaniam,  
Older Door No.19  
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15.Aravind Kumar,  
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New Door No.28  
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Kondithope, Chennai 600 001

27. The Commissioner,  
Corporation of Chennai,  
Chennai.

...Respondents 5 to 28/  
Defendants 3 to 9, 11, 12, 14 to 20, 22 to 27

Application praying that this Hon'ble Court be pleased  
to condone the delay of 128 days in set-aside the exparte  
Decree dated 09.03.2018 should not be allowed in C.S.No.323  
of 2012.

<https://hcservices.ecourts.gov.in/hcservices/>

This application coming on this day before this court

for hearing, the court made the following order:

This Application prays for the condonation of 128 days delay to set aside the exparte decree dated 09.03.2018 passed in C.S.No.323 of 2012.

2. This application has been filed by three applicants, who are arrayed as defendants 10, 13 and 21 in the suit. The applicants are tenants under the tenancy of the first defendant.

3. The suit has been filed by four plaintiffs arraying 27 parties including the Corporation of Madras as defendants. The plaint had been filed by the plaintiffs on the ground that D1 and D2 borrowed monies on the security of the suit property from the Hindu Janopakara Saswatha Nidhi Ltd. The amounts were outstanding for a long time. D1 and D2 approached the mortgagee one Mrs.Shymala Devi, for financial assistance in discharging the loan and executed a registered mortgage deed dated 28.01.2008 for a sum of Rs.15.00 lakhs. A sum of Rs.8,55,130/- was paid to the Nidhi and the balance of Rs.6,44,870/- was paid to the mortgagor, ie., D1 and D2 at the time of execution of deed of mortgage.

4. Since there was a default on the payment of the mortgage amount, despite repeated reminders, the mortgagee, i.e., Mrs.Shyamala Devi exercised the power of sale conferred under the mortgage. The property was brought to auction, that was deferred on three occasions at the request of D1 and D2 to clear the loan. Finally, the property was sold in auction on 17.04.2010 and the plaintiffs were the successful bidders. Out of the sale consideration of an amount of Rs.86,00,000/-, 25% of the amount, i.e., Rs.21,50,000/- was paid on the same day. The balance was subsequently paid and the sale deed came to be executed in favour of the plaintiffs on 24.05.2010.

5. The possession of the property however continued with D1 and D2 and despite repeated requests from the successful plaintiffs, D1 and D2 did not handover the property. Written statement was filed by D1 and D2 and after due notice to defendants 3 to 26, who are tenants in the property, they were set exparte on account of their non-appearance.

6. A perusal of the records indicate that summons have been sent to D3 to D26 on 16.05.2012. Since summons could not be served on some defendants, plaintiffs were permitted by this Court to effect substituted service. An affidavit of service dated 07.02.2013 has been filed enclosing the copy of the newspaper evidencing substituted service. There is thus no quarrel on the fact that summons in suit has been sent to D3 to D26 who have received the same.

7. The suit has itself been decreed in favour of the plaintiffs along with costs on 09.03.2018. The decree has not been challenged by D1 and D2. Proceedings for execution are stated to have been initiated by the plaintiffs and are pending.

8. The present application has been filed in the aforesaid context by the tenants/three defendants, viz., 10, 13 and 21. Heard Mr.J.Karunanithi, learned counsel appearing for the applicants and Mr.T.Skanthakumar learned counsel appearing for respondents 1 to 4.

9. At the threshold, this Court is prima facie, not inclined to accept the affidavit filed by one applicant ostensibly on behalf of two others as well. Be that as it may, as regards the contention that the applicants were not aware of the earlier proceedings, I reject the same straight away. The records reveal that as far as the first applicant, Kannan, is concerned, summons has been served through substituted means, since summons could not be served through regular means. A copy of the

newspaper(Malaimurasu) dated 31.01.2013 has been placed on record. As far as applicant Nos.2 and 3, Srinivasan and Murugesan are concerned, acknowledgement cards are placed on file evidencing receipt of suit summons.

10. Notice has thus been issued and duly served upon all the applicants. There is thus no cause, let alone sufficient cause, for the delay of 128 days in seeking to set aside the ex parte order dated 09.03.2018. I tend to agree with the learned counsel for the respondent who states that the present application is merely an indirect attempt by defendants 1 and 2 through the façade of the applicants, to obtain some relief in respect of the decree.

11. In the aforesaid circumstance, I find no reason whatsoever to entertain the prayer sought for in this application, as the same is devoid of merits. Accordingly, this application is dismissed.

Sd/.R.S.M.J

04.09.2018

//Certified to be a true copy//

Dated this the      th day of      2018.

KY/28.09.2018

सत्यमेव जयते

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

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