



C.R.P.[NPD].Nos.291 & 293 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 31.01.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.[NPD].Nos.291 & 293 of 2025

Plaza Maintenance and Services Limited
Represented by its General Manager/Authorized Signatory
Mr.S.Kalyanam
No.769, Anna Salai
Chennai – 600 002

... Petitioner in both CRPs

Versus

B.Loganathan

... Respondent in both CRPs

Common Prayer: Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 12.11.2024 in I.A.No.2 and 1 of 2024 in O.S.No.3917 of 2022 passed by the learned VII Additional City Civil Court, Chennai.

In both CRPs

For Petitioners : Mr.K.K.Muralitharan



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COMMON ORDER

Challenging the order allowing the petition filed to condone the delay in filing the application to set aside the exparte order, the revision in CRP.No.291 of 2025 has been filed.

CRP.No.293 of 2025 has been filed challenging the order allowing the application filed to set aside the exparte decree dated 10.02.2023 passed in O.S.No.3917 of 2022.

2. The suit has been filed for recovery of money, wherein, exparte decree has been passed. To set aside the exparte decree, the respondent herein had filed an application under Section 5 of the Limitation Act to condone the delay in filing the application to set aside the exparte decree. The main contention of the respondent in the application is that summons has not been served, therefore, the exparte decree has been passed on 10.02.2023. The contention of the learned counsel for the decree holder in the application is that the Trial Court in the executing proceedings, notice



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has been served on the same address. According to them, the defendant has purposively evaded to receive the summons, therefore, opposed the application. The Trial Court taking note of the fact that summons has not been properly served, summons has been affixed on the door and summons sent by post is also returned and the exparte decree has been passed only on the basis of paper publication allowed the application. Challenging the said order, the present revision has been filed.

3. The learned counsel for the petitioner would submit that the defendant has purposively evaded the service of summons, as a matter of right, an application to condone the delay cannot be entertained. According to him, several AOS have also been filed before the Trial Court to show that summons has been evaded purposively, however, the Trial Court has not considered the same. Hence, seeks for allowing these revisions.

4. Heard the learned counsel for the petitioner and perused the materials placed on record.



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5. The fact that summons has not been served is clearly recorded by the Trial Court. Though it is stated that summons has been affixed on the door, the fact that the Trial Court while ordering substituted service or while setting the defendant exparte has not followed the procedure contemplated under Order V Rules 17, 18 and 19 of CPC. No affidavit of the serving officer has been filed and verified by the Trial Court. Further serving officer has not been examined as mandated under Order 5 Rule 19 of CPC. Therefore, once the summons has not been served as required under law, now, it cannot be stated by the revision petitioner that the exparte decree cannot be set aside.

6. Such view of the matter, I do not find any merits in the revisions and accordingly, these revisions stand dismissed. No costs.

31.01.2025

Index : Yes / No
Internet: Yes
Speaking/non speaking order
dhk



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The VII Additional Judge
Additional City Civil Court, Chennai



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N.SATHISH KUMAR, J.

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