



C.M.A.No.268 of 2024

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WEB CO **T.V.THAMILSELVI, J.**

Today, when this matter was taken up for hearing under the caption “For Being Mentioned”, both the learned counsel for appellant and respondent appeared.

2. The learned counsel for appellant would submit that as per the judgment dated 17.07.2025 passed by this court, the appellant is inclined to pay the cost, but the learned counsel for respondent was not inclined to receive, since he is going to file appeal against the judgment passed by this court. To that effect, the copy of endorsement made by learned counsel for respondent is produced.

3. Considering his submissions, the Judgment dated 17.07.2025 is modified accordingly and this Court is inclined to direct the appellant to deposit the cost of Rs.25,000/- into the credit of Original Suit in O.S.No. 132 of 2016, on the file of Principal District Court at Tiruvallur within a period of two weeks from today.

12.08.2025

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N.B. :- Issue order copy on 13.08.2025

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T.V.THAMILSELVI, J.

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12.08.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-07-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**CMA No. 268 of 2024
and
CMP.No.2906 of 2024**

D. Koteeswaran Reddy
S/o.Late Chilakuri Duraisamy
Reddiyar, Siginikuppam Village,
Perandur Post, Uthukottai Taluk,
Tiruvallur District

Appellant(s)

Vs

G. Janarthanam
S/o.G.Kistama Naidu, No.207, Endra
Street, Perandur Village, Uthukottai
Taluk, Tiruvallur District.

Respondent(s)

PRAYER

Civil Miscellaneous Appeal has been filed under Order XLIII Rule 1 of the Code of Civil Procedure, prayed to set aside the order and decree passed in I.A.No.2 of 2023 in O.S.No.132 of 2016, dated 08.09.2023 on the file of Principal District Court at Tiruvallur.

For Appellant(s): Mr.M.L. Ramesh

For Respondent(s): Mr.W.M.Abdul Majeed



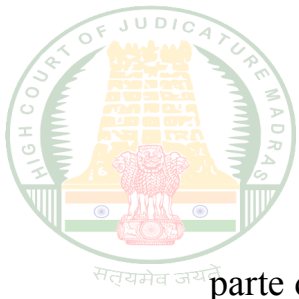
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JUDGMENT

The appellant has filed this appeal to set aside the order and decree passed in I.A.No.2 of 2023 in O.S.No.132 of 2016, dated 08.09.2023 on the file of Principal District Court at Tiruvallur.

2. Challenging the impugned order passed in I.A. No. 2 of 2023 in O.S.No.132 of 2016, the defendant has preferred this appeal. Before the trial court, the respondent/plaintiff filed a suit in O.S. No. 132 of 2016 for specific performance with other consequential reliefs against the appellant/defendant based on an alleged sale agreement executed in the year 2014. Though the defendant received notice, no one appeared properly on his behalf; hence, he was set ex parte. Consequently, an ex parte decree was passed on 21.12.2017. Thereafter, based on the ex parte decree, the respondent filed E.P. No. 45 of 2022 to execute the sale deed. In the execution proceedings, the defendant appeared, filed a counter, and the sale deed was subsequently executed. Meanwhile, upon learning about the ex parte decree, the appellant/defendant filed an application to set aside the ex



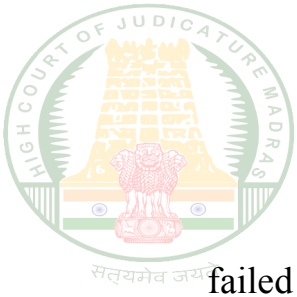
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parte decree in I.A. No. 2 of 2023, along with an application to condone the delay (I.A. No. 1 of 2023), which involved a delay of 1753 days.

3. In both I.A. Nos. 1 and 2 of 2023, the plaintiff remained ex parte. Nevertheless, the court considered the reasons assigned by the appellant/defendant and allowed the delay condonation application under Section 5 of the Limitation Act, with a cost of Rs. 25,000, on 03.03.2023. The said cost was deposited in favor of the District Mediation Centre, and the order was duly complied with. Thereafter, the trial court heard the application to set aside the ex parte decree under Order IX Rule 13 CPC in I.A. No. 2 of 2023. In this application, the respondent/plaintiff appeared and submitted counter objections. The defendant contended that he had given proper instructions to his counsel, but the counsel failed to file the written statement as he was selected as a Judicial Officer. Hence, the absence of the defendant was neither willful nor wanton.

4. The plaintiff contested the application, stating that several opportunities were given between 2016 and 2017 to file the written statement. Citing various dates, the plaintiff asserted that the defendant



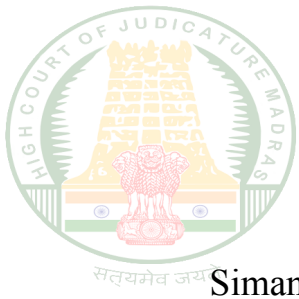
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failed to file the written statement, leading to the ex parte order. It was also argued that the defendant deliberately dragged the proceedings for over five years. After considering both submissions, the learned trial judge observed that the sale deed had already been executed on 12.12.2022 in the E.P. proceedings and that despite several adjournments, the written statement was never filed. Since the suit had attained finality in execution, the court found the reasons assigned by the defendant unsustainable and dismissed I.A. No. 2 of 2023.

5. Challenging the dismissal of the set-aside application, the present appeal has been filed. Learned counsel for the appellant submitted that the reasons for condoning the delay and setting aside the ex parte decree are identical. Since the trial court had already accepted those reasons while allowing the Section 5 application, it ought to have allowed the set-aside application under Order IX Rule 13 CPC as well. The dismissal, therefore, is erroneous and liable to be set aside.

6. The appellant relied on the legal position, reported in 2015(1) CTC 267, in the case of S.Nehru and another Vs. S.Sivasankar @ Babu @



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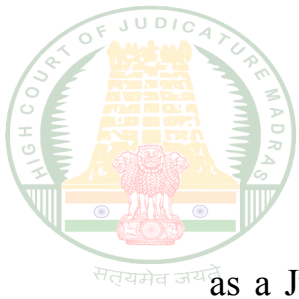
Simanbal and others, in which stated as follows:

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" Code of Civil Procedure, 1908 (5 of 1908), Order 9, Rule 13 - Limitation Act, 1963 (36 of 1963), Section 5 - Revision against order setting aside Ex-parte Decree - Earlier delay of 842 days in seeking to set aside Ex-parte decree was condoned and confirmed by High Court, wherein it was observed that application to set aside ex-parte decree can be independently contested - common affidavit was filed in support of applications seeking condonation of delay and to set aside ex-parte decree - As such reasons for seeking condonation of delay as well as for setting aside decree was one and same - Said reasons have been accepted in earlier proceeding - since same reasons were accepted earlier, Lower Court was correct in setting aside exparte decree - Civil Revision Petition dismissed."

7. The factual matrix is that the suit for specific performance was filed in 2016, and though the appellant/defendant entered appearance, he failed to file a written statement and was thus set ex parte. The ex parte decree was passed in 2017. Nearly five years later, in 2021, the plaintiff initiated E.P. proceedings to execute the decree. Upon receiving notice in the execution proceedings, the defendant claims to have learned of the ex parte decree and immediately filed applications to condone the delay and set aside the ex parte decree (I.A. Nos. 1 & 2 of 2023).

8. The defendant contends that his earlier counsel was appointed



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as a Judicial Officer, resulting in a breakdown of communication. Hence, his failure to appear and file a written statement was unintentional. The plaintiff argued, however, that despite several adjournments, the defendant failed to file the written statement and remained inactive for five years before moving the application. In the meantime, the sale deed had already been executed based on the ex parte decree.

9. Admittedly, the sale deed was executed before the filing of I.A. Nos. 1 and 2 of 2023. In the Section 5 application, which was allowed upon payment of costs, the plaintiff did not appear. However, in the Order IX Rule 13 application, the same reasons were rejected solely because the plaintiff raised objections. It is true that the defendant appeared through counsel but failed to file a written statement on time. Nevertheless, there is a plausible explanation that his counsel being appointed as a Judicial Officer caused a communication gap. The Supreme Court has repeatedly held that a litigant should not suffer due to the lapses of his counsel.

10. Furthermore, the defendant disputes the genuineness of the sale agreement. In a suit for specific performance, both parties must be



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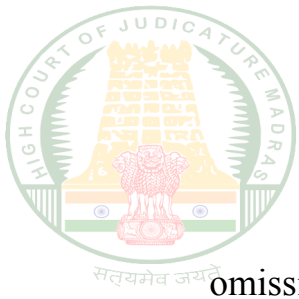
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given a fair opportunity to substantiate their respective claims. If the defendant is denied the opportunity to present his case, it would amount to a denial of natural justice and cause irreparable prejudice.

11. Therefore, the authorities cited by the appellant squarely apply to the facts of the present case. Once the trial court accepted the reasons in the delay condonation application, it ought to have adopted the same reasoning while deciding the application under Order IX Rule 13 CPC. The impugned order is thus liable to be set aside.

12. Accordingly, the Civil Miscellaneous Appeal is allowed. Consequently, I.A. No. 2 of 2023 is allowed, on the condition that the appellant pays a cost of Rs. 25,000 to the counsel for the respondent within two weeks from the date of receipt of a copy of this order. Upon such payment, the ex parte decree shall stand set aside.

13. It is also brought to the court's notice that the learned counsel for the respondent failed to inform the court during the hearing of the Section 5 application that the sale deed had already been executed. This



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omission is noted.

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17-07-2025

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

1. The Principal District Judge,
Tiruvallur.
2. The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMILSELVI J.
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