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CRP.No.704 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2025

CORAM

THE HONOURABLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRP NO. 704 of 2025

and CMP.No.4019 of 2025

J. Prabahar

S/o. R.Jayaveerapandian, Door No. 88,
Vellala Street, Purasawalkam, Chennai 84

..Petitioner

Vs

1.Orchard Manor Members Association
Rep by its Secretary Kishore S/o. R.Giridhardoss,
Door No. 3, Diwan Rama Road, Purasawalkam,
Chennai 84

2.V.R.Pattabiraman
General Power Agent of P.Saravana Prasad
Door No. 2/12, Orchard Manor,
No. 2, Diwan Rama Road,
Purasawalkam, Chennai 84

..Respondents

PRAYER: Civil Revision Petition filed under Section 115 of CPC, 1908, as against the order and decreetal order passed in I.A.No. 2 of 2024 in A.S.S.R.No.10861 of 2024 on the file of I Additional City Civil Court, Chennai, dated 05.02.2025.



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For Petitioner(s): Dr.Fr.Xavier Arulraj , Senior Advocate
For M/s.R.Sripriya

For Respondent(s):

M/s.N.Sivaprakash
N.Manikandan
K.Sudha
K.Su.Kunjalambikai For R1
M/s.S.William
A.Jenifer
W.J.S.Prabhu For R2

ORDER

This Civil revision Petition has been filed seeking to set aside the order passed in I.A.No.2 of 2024 in A.S.SR.No.10861 of 2024 on the file of I Additional Judge, City Civil Court, Chennai.

2. The brief facts of the case is as under:-

(a) The Revision Petitioner is the 2nd defendant in O.S.No.6710 of 2013 on the file VII Assistant Judge, City Civil Court, Chennai. The 1st respondent herein/Orchard Manor Members Association is the plaintiff. The suit had been filed under Order VII Rule 1 of C.P.C., for permanent injunction restraining the



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defendants, their men, agents, servants or any body else claiming through or under them in any manner from obstructing the free flow of the passage in the flat of Orchard Manor Flats and for mandatory injunction directing the defendants or any one acting on their behalf to remove the office from the suit property which is causing nuisance to the Flat owners.

(b) The petitioner/2nd defendant, had engaged a counsel and filed a written statement; however he remained exparte. Therefore, an exparte decree came to be passed against him on 18.04.2016.

(c) Subsequently, the plaintiff filed E.P.No.1944 of 2016 on 01.08.2016. The case was posted for hearing on 19.09.2016. On that date, Notice was ordered for hearing on 25.10.2016 through court and Registered Post. On 25.10.2016, the petitioner/2nd defendant/judgment debtor entered appearance through his counsel and filed vakalat and on 22.02.2017 and the counsel also filed counter. However, since the 1st judgment debtor did not file counter, he was set set exparte in E.P.No.1944 of 2016.



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(d) While so, the petitioner had filed I.A.No.7139 of 2018 to condone the delay of 738 days in filing the petition seeking to set aside the Ex-parte decree in O.S.No.6710 of 2013. I.A.No.7139 of 2018 was dismissed by the VII Assistant Judge, City Civil Court, Chennai, on 08.08.2019.

(e) Against the dismissal of I.A.No.7139 of 2018, the petitioner filed C.R.P.No.2226 of 2020 before this court on 18.09.2019. C.R.P.No.2226 of 2020 was dismissed by this Hon'ble Court on 18.01.2021.

(f) While so, order was passed by the XXVIII Assistant Judge, City Civil Court, Chennai, in E.P.No.1944 of 2016 for removal of office of the Revision Petitioner on 02.09.2022. The court had issued warrant to execute the decree and since it was returned unexecuted, Police aid was ordered for removal of the office. However since the petitioner had obstructed the execution on of warrant 01.11.2022 the court had ordered for removal of office as directed in the Decree by Court Amin with police help, by 14.11.2022.

(g) On 14.11.2022, the petitioner had filed E.A.No.3 of 2022 under Section 47 CPC. After due contest, E.A.No.3 of 2022 was dismissed on



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11.09.2023 and fresh delivery warrant was issued for removal of the office as directed in Decree. The petitioner had filed C.R.P.No.3647 of 2023 seeking to set aside the order dated 19.09.2023 in E.A.No.3 of 2022. In the said CRP, Interim stay was granted on 06.10.2023 staying all further proceedings in E.P.No.1944 of 2016. Subsequently, C.R.P.No.3647 of 2023 came to be dismissed by this court on 19.06.2024.

(h) Challenging the order passed in CRP.No.3647 of 2023, the petitioner had filed S.L.P.No.29454 of 2024 and when the matter had come up before the Hon'ble Supreme Court on 12.08.2024 the counsel appearing for the petitioner had not pressed the SLP and instead sought leave to explore other available legal options and as such the Special Leave Petition had been dismissed as not pressed.

(i) On 27.09.2024, the petitioner filed appeal in A.S.S.R.No.10861 of 2024 against the judgment and decree passed in O.S.No.6710 of 2013 along with an application in I.A.No.2 of 2024 to condone the delay of 3051 days in filing the appeal. The respondent/plaintiff had filed counter and the appellate



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court finding that no sufficient cause had been shown by the petitioner to condone the delay of 3051 days had dismissed I.A.No.2 of 2024. Against which, the present Civil Revision Petition has been filed.

3. Dr.Fr.Xavier Arulraj, learned Senior counsel appearing for Ms.R.Sripriya, the learned counsel for the petitioner would submit that the petitioner had been bonafidely pursuing the E.P., by filing application under Section 47 of CPC for obstruction in E.A.No.3 of 2022 in respect of removal of the office and since the said E.A., got dismissed on 11.09.2023, the petitioner had filed CRP.No.3647 of 2023 and the CRP was also dismissed on 19.06.2024 and subsequently, the SLP was filed before the Apex Court and it was dismissed as withdrawn on 12.08.2024 with liberty to explore other legal options. Since the petitioner had been bonafidely pursuing the CRP before the High Court and the SLP before the Apex Court the trial court ought to have condoned the delay on the ground that the petitioner had been bonafidely pursuing other remedy and that thereby the reason for not filing the appeal within time was bonafide and that he had shown sufficient cause.



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4. He would further submit that a cursory reading of Order 9 Rule 13 CPC would show that in a case where the defendant who suffered ex parte decree has two remedies:- (1) either file application under Order 9 Rule 13 CPC to set aside the ex parte decree or (2) to file regular appeal from the original decree from the First Appellate Court and challenge the Ex parte decree on merits and since the petitioner was bonafidely contesting the dismissal of the petition to condone the delay in setting aside the ex parte order and also the Execution Petition, the time spent in pursuing the other remedies can be considered as sufficient cause for not filing the appeal in time. In support of his contention, the learned senior counsel for the petitioner would rely on the judgment of the Apex Court reported in **(2019) 6 Supreme Court Cases 387 [Bhivchandra Shankar More Vs. Balu Gangaram More and others]**. He would further reiterate that the petitioner had pursued Order 9 Rule 13 CPC and also pursued the application under 47 CPC and thereby the time taken to pursue both application to be taken as bonafide and the Appellate Court, ought to have condoned the delay in filing the appeal.



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5. Per contra, the learned counsel for the 1st respondent/plaintiff would submit that the petitioner had earlier filed application under Order 9 Rule 13 CPC seeking to set aside the exparte decree along with the petition to condone the delay of 738 days in I.A.No.7139 of 2018, that was dismissed by the trial court on 18.09.2019 against which, C.R.P.No.2226 of 2020 was filed and the said CRP was dismissed by this court on 18.01.2021. He would further submit that if the petitioner immediately after dismissal of the CRP, had filed the appeal and sought for condonation of delay, it could have been treated as availing of a consecutive remedy which is bonafide whereas the petitioner had not filed the appeal immediately after dismissal of CRP.No.2226 of 2020 and he has also not filed SLP., against that order passed in CRP.2226 of 2020. In such circumstances the First Appellate Court, rightly finding that the petitioner had adopted dilatory tactics and not shown sufficient cause for condoning the delay of 3051 days in filing the appeal had dismissed the appeal. He would further submit that here is a case, where the petitioner had adopted dilatory tactics and had attempted to delay and protract the proceedings at every stage and he would seek for dismissal of the Civil Revision Petition.



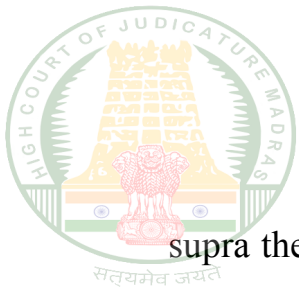
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Heard the learned counsel appearing for both sides.

6.In this case, the petitioner who is the 2nd defendant O.S.No.6710 of 2013 on the file VII Assistant Judge, City Civil Court, Chennai had been served with the notice in the suit and he had engaged a counsel and filed his written statement and thereafter remained exparte and suffered an exparte decree. Thereafter he had approached the Trial Court seeking to set aside the exparte decree under Order 9 Rule 13 CPC along with an application to condone the delay of 738 days in I.A.No.7139 of 2018. The petition in I.A 7139 of 2018 had been dismissed by the trial court on 08.08.2019. against which CRP.No.2226 of 2020 had been filed before this court and it had also been dismissed by this Court on 18.01.2021 itself. If the petitioner had been bonafide and diligent, he would have filed appeal immediately after the dismissal of CRP.No.2226 of 2020. Whereas the appeal in A.S.S.R.No.10861 of 2024 had been filed only on 27.09.2024.

7.Of course in the decision ***Bhivchandra Shankar More*** referred



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supra the Honble Apex court while discussing the relative scope and operation

of Order 9 Rule 13 vis-a-vis Sec 96(2) and Sec 97 of C.P.C and the duties of the Court when deciding cases under the above provisions has held that the time spent therein can be considered as sufficient cause for condonation of delay, provided it can only be in circumstances when there is no dilatory tactics or lack of bonafides on the part of the petitioner.

8.In this case, if the petitioner had filed the appeal against the decree in O.S 6710/2013 immediately after the dismissal of the CRP.No.2226 of 2020 by this court on 18.01.2021 the time spent in pursuing the petition under Order 9 Rule 13 can be considered as sufficient cause, whereas the appeal had been filed much belatedly after three years on 27-09-2024 that too after finality of the order in the Execution Petition in E.A. 3 of 2022. This court finds that the petitioner had adopted dilatory tactics and had not approached the Appellate Court with bonafideness and thereby he cannot be said to have shown sufficient cause for condoning the delay in filing Appeal. Therefore, this court finds no infirmity in the order passed by the Appellate Court in dismissing the I.A.No.2 of 2024 in A.S.S.R.No.10861 of 2024.



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Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently,

connected Miscellaneous Petition is closed.

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nvsri

To

1. The learned Judge, I Additional City Civil Court, Chennai.

1. Orchard Manor Members Association

Rep by its Secretary Kishore S/o. R.Giridhardoss, Door
No. 3, Diwan Rama Road, Purasawalkam, Chennai 84

2. V.R.Pattabiraman

General Power Agent of P.Saravana Prasad Door No. 2/12, Orchard Manor, No.
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