



*CMA.Nos.726 and 728 of 2025*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 11.03.2025

CORAM:

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**CMA Nos.726 and 728 of 2025 and**  
**CMP Nos.5731 and 5733 of 2025**

Mohamedsaman

... Appellant in  
both CMAs

**Vs.**

V.Gayathri

... Respondent in  
both CMAs

**Prayer in CMA No.726 of 2025:** Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC to set aside the fair and final order dated 30.01.2025 made in REA No.05 of 2017 in E.P.No.75 of 2020 in O.S.No.37 of 2017 on the file of the Additional District Judge, Krishnagiri.

**Prayer in CMA No.728 of 2025:** Civil Miscellaneous Appeal filed under Order 43 Rule 1 of CPC to set aside the fair and final order dated 30.01.2025 made in REA No.06 of 2025 in E.P.No.75 of 2020 in O.S.No.37 of 2017 on the file of the Additional District Judge, Krishnagiri.



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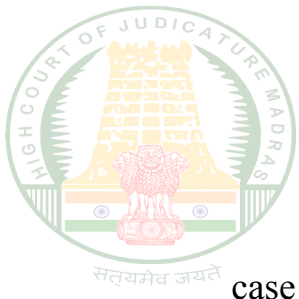
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For appellant : K.S.Karthik Raja

### **COMMON JUDGMENT**

Both the civil miscellaneous appeals have been filed, challenging the order passed by the execution court, dismissing the application filed by the appellant, seeking to the set aside the exparte order passed against the appellant in E.P.No.75 of 2020, dated 19.07.2024, along with the application to condone delay of 732 days in filing the set aside petition.

2. The above said applications (REA No.5 and 6 of 2025) were dismissed by the execution court on the ground that there was no representation for the petitioner/ appellant on the date of hearing. Therefore, it is clear that the applications have not been dismissed on merits and the same were dismissed only for non prosecution. If the application for setting aside the exparte decree is dismissed on merits, certainly under Order 43 Rule 1(d) of CPC, appellant can challenge it by filing appeal. The appellate court, based on reasoning in the dismissal order can decide the correctness of the same. However, in the



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case on hand, the appellant failed to appear before the court and consequently his application was dismissed for default. It is for the applicant to convince the court as to the sufficient reason for his non appearance, which can be done by sworn affidavit or by leading evidence. In the absence of further evidence in the form of sworn evidence or statement on oath before court, perusing impugned order, this court cannot take any decision as to sufficiency of reason for non appearance of appellant. It is pertinent to note that even in the affidavit filed before this court in support of stay petition, the appellant herein has not given any reason for his failure to appear before the court. In such circumstances, it is for the appellant to approach the very same court, seeking restoration of the applications, which were dismissed for default. Hence, both the civil miscellaneous appeals are dismissed as not maintainable with liberty to the appellant to move very same court.

3. Accordingly, the civil miscellaneous appeals are dismissed. It is for the appellant to work out his remedy before the concerned court. The registry is directed to return the original impugned order to counsel for the appellant. There shall be no order as to costs. Connected



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miscellaneous petitions are closed.  
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**11.03.2025**

Index : Yes/No  
Speaking order : Yes/No  
Neutral citation : Yes/No  
mst

**To**

1. The Additional District Judge,  
Krishnagiri.
2. The Section Officer,  
V.R.Section, Madras High Court.



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**S.SOUNTCHAR, J.**

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