



WEB COPY

CRP.No.2122 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2025

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRP.No.2122 of 2024

The South India Assemblies of God Church,
Rep. by its General Superintendent
A.Abraham Thomas
S/o. Late Rev.K.C.Andrews
E.17, Second Street,
Anna Nagar East,
Chennai – 600 102.
(Cause title accepted vide Court order
dated 30.04.2024 made in CMP No.9110 of 2024
in CRP SR.37493 of 2024)

... Petitioner

Vs.

M/s.King David Global Ministries Trust,
Rep. by its Managing Trustee,
Pastor Santharaj (died)

Now Rep. by its Manging Trustee
Mr.S.Josh Vivian Raj
No.25, Palaniappa 1st Street,
Ayanavaram, Chennai – 600 023.

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition and thereby set aside the order passed in I.A.No.1 of 2022 dated 02.12.2023 thereby condone the delay of 1374 days in filing the application to set aside the exparte decree in O.S.No.6037 of 2016.



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For Petitioner : Mr.S.William

For Respondent : Mr.A.Mohandoss

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 02.12.2023 in I.A. No. 1 of 2022 in O.S. No.6037 of 2016, on the file of the III Assistant Judge (FAC) IV Assistant Court, Chennai, thereby dismissing the application filed by the petitioner to condone the delay of 1374 days in filing the petition to set aside the ex-parte decree.

2. The suit has been originally filed for a permanent injunction restraining the revision petitioner from interfering with the possession of the so-called Church, said to be in the possession of the respondent herein. The said suit has been decreed ex-parte on 26.07.2018. Thereafter, an application in I.A. No.1 of 2022 has been filed by the revision petitioner to set aside the ex-parte decree with a delay of 1374 days, on the ground that the suit summons has not been served, and the private summons is said to have been served on him. However, according to him, he was not in Chennai, he was in Kerala.



2.1. Further, the respondent herein has already filed a similar suit in O.S. No.3674 of 2007. The said suit was contested partly and the same was allowed to be dismissed for default on 04.11.2016. After the dismissal of the above suit, immediately the present suit has been filed. The revision petitioner also issued a legal notice on 11.11.2019, which was replied by the respondent on 19.11.2019. Thereafter, the suit came to be filed. Hence, it is the contention that, as the summons have not been served and the petitioner was not aware of the ex-parte decree and only through another suit in C.S. No.321 of 2021, which was pending before this Court, the petitioner came to know about the ex-parte decree. Therefore, there was a delay in filing the petition to set aside the ex-parte decree.

3. The said application in I.A. No.1 of 2022 has been opposed by the respondent and the Trial Court, taking note of the fact that the private summons is said to have been served to the address mentioned in the plaint, dismissed the contention of the petitioner and also dismissed the application in I.A. No.1 of 2022.

4. Heard both sides and perused entire materials available on record.



5. Though the delay appears to be abnormal, the fact remains that the Court notice has not been served. The Trial Court has simply relied upon the so-called private summons said to have been addressed to the Church address. There was no material whatsoever placed and relied upon by the Trial Court, to show that only the revision petitioner has received the summons.

6. A similar suit had already been filed by the respondent, which was allowed to be dismissed for default on 04.11.2016, that too when substantial portion of evidence were already on record. Thereafter, immediately, the present suit has been filed in the same month. It is also to be noted that, apart from the other suit, C.S. No.321 of 2021 is also filed before this Court. Till such time, the ex-parte decree obtained had not been disclosed.

7. Above facts, clearly indicates that the suit has to be decided on merits, particularly taking note of the fact that after the dismissal of the earlier suit filed for relief of injunction, immediately, a similar relief has been sought and ex-parte orders have been obtained. Therefore, this Court is of the view that, considering the nature of the pleadings and the number of



suits filed, the *lis* should reach finality only on the basis of adjudication and not by way of ex-parte order, taking note of the fact that the summons have not been properly served.

8. Accordingly, the order of the Trial Court in I.A. No.1 of 2022 in O.S. No.6037 of 2016, dismissing the application filed to condone the delay of 1374 days in filing an application to set aside the ex-parte decree, is set aside. The Trial Court shall decide on merits the application under Order IX Rule 13 of CPC.

9. With the above observations, this Civil Revision Petition is allowed. No costs.

24.01.2025

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To

1. The III Assistant Judge (FAC) IV Assistant Court,
Chennai.
2. The Section Officer,
V.R. Section, High Court of Madras.



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N.SATHISH KUMAR, J.

Kv

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