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C.R.P. (PD) No.1492 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2025
PRONOUNCED ON : 29.08.2025

CORAM:

THE HON'BLE MR. JUSTICE P.B. BALAJI

C.R.P. (PD) No.1492 of 2023
and
C.M.P. No.9877 of 2023

D. Balaji ... Petitioner
vs.
1. D. Senthilvelavan
2. Saraswathi
3. A. Mohamed Rafique ... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order, dated 05.12.2022 passed by the learned XII Assistant Judge, City Civil Court, Chennai made in I.A. No.2 of 2022 in O.S. No.5078 of 2018 and allow this Revision Petition.

For Petitioner : Mr. G. Sugumaran
For Respondents : Mrs.Sharada Vivek

ORDER

The plaintiff, in a suit for declaration and permanent injunction, is the revision petitioner, aggrieved by the order of the trial Court in I.A.



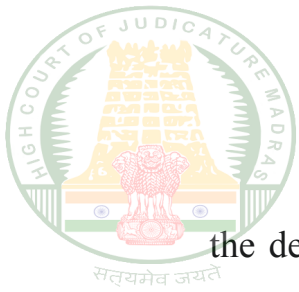
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No.2 of 2022, setting aside the *ex-parte* order passed against the defendants 1 and 2 and receipt of the written statement filed by them.

2. I have heard Mr.G. Sugumaran, learned counsel for the revision petitioner and Mrs.Sharada Vivek, learned counsel for the respondents.

3. I have also gone through the records as well as the decisions on which reliance has been placed, by the learned counsel on either side.

4. It is the contention of Mr.G. Sugumaran, learned counsel for the revision petitioner /plaintiff that the defendants, without filing an application for condonation of delay in filing the written statement, beyond the statutory period of limitation provided expressly under the provisions of the Code of Civil Procedure, cannot be, thereafter, permitted to file the written statement, without a separate application seeking condonation of the delay. It is the further contention of Mr.G.Sugumaran that merely because an application taken out under Order IX Rule 7 of CPC was allowed, would not automatically entitle the defendants to file the written statement filed by them, to be taken on board. In this regard, the learned counsel for the petitioner relies on



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the decision of the Hon'ble Supreme Court in ***Kailash vs. Nanhku and others reported in (2005) 4 SCC 480*** and the decision of the Punjab and Haryana High Court in ***Swaranjeet Kaur vs. Darshan Singh reported in 2017(3) Civ.C.R.355 (P. & H.)***.

5. Per contra, the learned counsel for the respondents would state that an application for condonation of delay was in fact filed as early as on 17.03.2022, but however the same was returned as “not necessary” on 03.06.2022. In any event, she would state that it is not mandatory that an application for condonation of delay has to be independently taken out when the written statement had been filed along with the application under Order IX Rule 7 CPC and the said application was also allowed.

6. The learned counsel for the respondents has relied on the following decisions :

i) ***Dwarika Prasad (D) Thr. LRs vs. Prithvi Raj Singh reported in 2024 INSC 1030*** and

ii) The order of this Court in ***C.R.P. (MD) No.2283 of 2022 in the case of P.K. Ganesan vs. Valliyathal, dated 27.09.2023***. Placing reliance

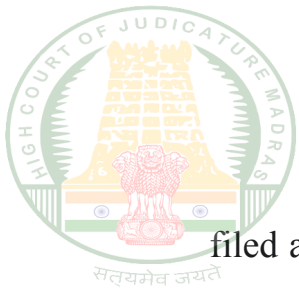


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on these decisions, the learned counsel for the respondents state that the Hon'ble Supreme Court has held that the High Court erred in taking a hyper technical view and the same should not be taken and there was no need to file a separate application for condonation of delay. This Court in **P.K. Ganesan's** case, in similar circumstances, held that there is no limitation for filing an application under Order IX Rule 7_CPC and even if no valid reasons had been assigned in support of the affidavit seeking condonation or setting aside the *ex-parte* order, an opportunity ought to be given to the defendant to take part in the suit.

7. It is an admitted fact that along with the application filed under Order IX Rule 7 CPC, the written statement has also been filed. The Court has found that the respondents have made out sufficient cause for setting aside the *ex-parte* order and proceeded to allow the application on payment of costs, in order to compensate the revision petitioner for the prejudice, if any caused on account of delay and inaction on the part of the respondents. However, the only contention that is now raised in the revision petition is that mere entertaining or allowing an application under Order IX Rule 7 CPC would not automatically condone the delay in filing the written statement, even when the written statement had been



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filed along with the application under Order IX Rule 7 CPC. It is in this connection that the judgments in ***Kailash's*** as well as ***Swaranjeet Kaur's*** case have been relied on.

8. In ***Kailash's*** case, it was a matter arising in an election trial under the provisions of the Representation of the People Act, 1951. In such circumstances, the Hon'ble Supreme Court has held that extension of time beyond the limit laid down under Order VIII Rule 1 CPC and proviso thereto, could only be by way of exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction, however brief there might be.

9. In ***Swaranjeet Kaur's*** case relying on the ratio laid down in ***Kailash*** case referred to supra, the Punjab and Haryana High Court held that though Order VIII Rule 1, CPC, is procedural in nature and directory, still a prayer for extension of time made by the defendant cannot be granted as a matter of routine or merely for the asking, after the expiry of 90 days and that any extension of time can be allowed only for reasons to be assigned by the defendant and also by the Court on being satisfied with the reasons assigned by the defendant, by recording the reasons in



writing.

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10. However, in a later decision of the Hon'ble Supreme Court in ***Dwarika Prasad's*** case, the Hon'ble Supreme Court, has dealt with the question whether an application for restoration of the suit, without an application under Section 5 of the Limitation Act was maintainable. The Hon'ble Supreme Court held that even when the suit was decreed *ex-parte* and the application was filed after five months after the expiry of the limitation without a supporting application under Section 5 of the Limitation Act, praying for condonation of delay, the Hon'ble Supreme Court, relying on ***Bhagmal & others vs. Kunwar Lal & others reported in (2010) 12 SCC 159*** held that an Order IX Rule 13 CPC application had all the ingredients of the application for condonation of delay and procedure being hand maid of justice, the Courts should not take a hyper technical view and come to the conclusion that there was a violation of mandatory provisions of law. The Hon'ble Supreme Court further held that endorsing such a view would effectively mean that the purpose of judicial procedure is ignored and went on to hold that the procedure cannot stand in the way of achieving just and fair outcome. The learned Judge of this Court in ***P.K. Ganesan's*** case held that there



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was no limitation for filing an application under Order IX Rule 7 CPC as the suit was still pending and no *ex-parte* decree has been passed.

11. Applying the above ratio laid down by the Hon'ble Supreme Court as well as this Court, I can only see that when the respondents / defendants have filed the written statement along with the application filed under Order IX Rule 11 CPC and admittedly, the suit was pending, and no *ex-parte* decree has been passed by such time, the order passed by the trial Court setting aside the *ex-parte* order against the defendants would automatically imply that the written statement filed along with the said application has also been taken on file. There is no necessity for the defendants to take out an independent application for condonation of delay in filing the written statement beyond the statutory period prescribed under the provisions of the Code of Civil Procedure. As held by the Hon'ble Supreme Court, procedure is only an hand maid of justice and the Court should not put or create hyper technical obstacles, in the path of doing justice to the parties. I am unable to therefore countenance the submissions of the learned counsel for the revision petitioner that the written statement could not have been received without an application for condonation of delay.



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WEB COPY 12. In the light of the above, the Civil Revision Petition is dismissed as I do not find any infirmity in the order, dated 05.12.2022 passed by the learned XII Assistant Judge, City Civil Court, Chennai made in I.A. No.2 of 2022. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2025

Internet: Yes/No
Index: Yes/No
Speaking/Non-speaking order
Neutral Citation : Yes/No
vsi2

P.B. BALAJI, J.

vsi2

To
The XII Assistant Judge, City Civil Court,
Chennai.



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PRE-DELIVERY ORDER
IN
C.R.P. (PD) No.1492 of 2023
and
C.M.P. No.9877 of 2023

29.08.2025