

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.07.2025

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

C.M.P.No.20894 of 2023
in
SA.No.415 of 2007

Lakshmi

... Petitioner

Versus

Kaliaperumal

... Respondent

Civil Miscellaneous Petition filed Under Order XLI Rule 21 of the Code of Civil Procedure read with Section 151 CPC, praying to rehear the appeal S.A.No.415 of 2007 which was disposed of on 03.06.2019.

For Petitioner : Mr. R. Gururaj
For Respondent : Mr.G.Murugendran

ORDER

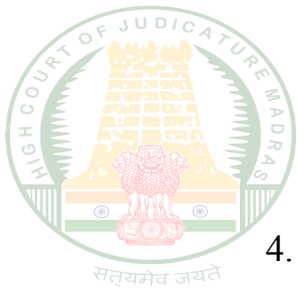
The petitioner has filed this petition seeking to rehear the second appeal, S.A. No.415 of 2007, which was disposed of by this Court on 03.06.2019.



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2. Heard, Mr. R. Mohan Babu, learned counsel for the petitioner and Mr.G.Murugendran, learned counsel appearing for the respondent and perused the materials available on record.

3. The learned counsel for the petitioner submitted that he is appearing for the respondent in the second appeal. The original suit, O.S. No.198 of 2004, was filed by her for declaration and permanent injunction. The suit was dismissed by the learned trial Judge, against which she preferred an appeal in A.S. No.85 of 2005. The first appellate court allowed the appeal, setting aside the findings of the trial court. Subsequently, the defendant/respondent preferred the second appeal, S.A. No.415 of 2007. He entered appearance through counsel. The case came up for final disposal on 29.03.2019 and was then adjourned to 04.04.2019, and later to 11.04.2019. On that date, the respondent advanced arguments and the case was posted on 16.04.2019 as part heard. However, it was later came to know that on 16.04.2019, the respondent was set ex parte and the order was eventually pronounced on 03.06.2019, allowing the second appeal.



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4. It was only in the third week of July that the petitioner / respondent, upon enquiring with the counsel, came to know about the disposal of the appeal. On verification, it was found that the appeal had been disposed of ex parte. The petitioner claims to have a valid defense to prove her right over the suit property. She states that due to an oversight, the case was missed from the cause list by her counsel, and had it been noticed, the counsel would have appeared and argued the matter. The ex parte order was passed without their knowledge. She submits that the counsel could not attend Court on that date as he was engaged in another Court and that his absence was neither willful nor intentional. Hence, she prays for a rehearing of the second appeal.

5. The learned counsel for the respondent strongly objected to the petition, stating that the counsel for the petitioner remained ex parte deliberately. He pointed out that all procedural steps were duly followed and the judgment was pronounced on 03.06.2019. The present petition for rehearing was filed only on 29.07.2020, over a year later, and that too along with a petition for condonation of delay. This, according to the respondent,



shows an intention to drag on the proceedings, and therefore, he prays for dismissal of the petition as devoid of merits.

6. Upon considering the submissions of both sides, it is observed that the second appeal was listed for final arguments. The appellant/defendant had advanced his arguments. On 11.04.2019, the case was adjourned to 16.04.2019 for the reply arguments of the respondent. However, there was no representation on behalf of the respondent on that date, and hence, she was set ex parte. The Court thereafter reserved the matter for orders and subsequently pronounced the judgment on 03.06.2019, setting aside the findings of the Courts below.

7. This Court had elaborately discussed the facts, circumstances, and conduct of the parties in the final judgment. The petitioner claims that her absence was due to oversight and non-observance of the cause list. She further argues that if an advocate is engaged in another Court, the inability to appear in the listed Court cannot be construed as negligence or willful default, and hence, sufficient cause is made out.



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8. The petitioner relied on a Supreme Court decision reported in (1983) Supreme (SC) 14. However, in the present case, no affidavit has been filed by the petitioner's counsel or by any junior counsel stating that they were engaged in another Court. Instead, the affidavit was filed by the party herself, which weakens the petitioner's reliance on the cited authority.

9. On perusal of the records, it is seen that the appeal is from the year 2007 and only in 2019 it was taken up for final arguments. Even at that stage, the respondent failed to appear, resulting in an ex parte order. Thereafter, the petition to rehear the matter was filed along with a petition for condonation of delay.

10. Given the fact that no affidavit has been filed by the counsel, and no junior counsel followed up the matter, the reasons stated in the petition are not fully acceptable. However, to avoid further multiplicity of proceedings and to afford one more opportunity to the petitioner, this Court is inclined to allow the application on the condition that the petitioner pays



a cost of Rs.25,000/- to the respondent within two weeks from the date of

receipt of a copy of this order. The matter shall be posted under the caption

“part heard” as arguments were already advanced by the appellant.

11. The learned counsel for the respondent is directed to cooperate for the early disposal of the case on merits and not to evade Court proceedings.

12. On multiple occasions, this court has made efforts to dispose of the matter. However, the litigants ought not to suffer, therefore, the learned counsel appearing for the respondent also submit his arguments and assist in the disposal of the case at the earliest possible opportunity.

13. Accordingly, this Civil Miscellaneous Petition is Allowed.

03.07.2025

Index : Yes/No

Speaking/Non Speaking order

Neutral Citation: Yes/No

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To

- 1.The I Additional Subordinate Judge, Cuddalore.
- 2.The Additional District Munsif, Cuddalore.



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T.V.THAMILSELVI, J.

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