



C.R.P.No.2323 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 08..07..2025

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

C.R.P.No.2323 of 2024

and

C.M.P.No.12210 of 2024

Thangavel Udaiyar

..... Petitioner

-Versus-

Arulmigu Arunachaleshwara Samy Thirukovil,

Mavilangai Village,

Head Office, Periyavadakarai Village,

Rep. by its Secretary.

..... Respondent

Petition filed under Section 11 of the Code of Civil Procedure, 1908, praying to set aside the order and decretal order dated 03.02.2024 made in I.A.No.2 of 2022 in O.S.No.88 of 2002 by the learned District Munsif cum Judicial Magistrate, Veppanthattai.

For Petitioner : Mr.G.Ilamurugu

*For Respondent : Mr.J.Daniel,
Government Advocate*



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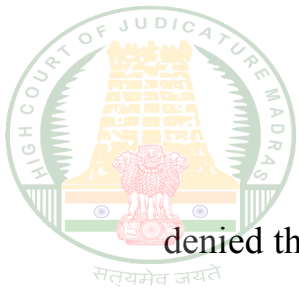
ORDER

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This Civil Revision Petition is filed challenging the order dated 03.02.2024 passed by the learned District Munsif, Veppanthattai, dismissing the application filed by the petitioner (6th defendant) seeking condonation of a delay of 101 days in filing an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, to set aside the ex parte decree dated 09.11.2018.

2. This Court has heard both sides and perused the materials available on record. The application for condonation of delay was dismissed by the trial court on the ground that no sufficient cause had been made out for the delay. However, the petitioner (6th defendant) has consistently contended that he was not directly served with summons in the suit and that only substituted service was resorted to. It is his case that he was unaware of the proceedings and came to know of the ex parte decree only much later, which led to the delay in filing the application under Order IX Rule 13 CPC.

3. The suit in question was filed by the respondent deity seeking a declaration of title in respect of the suit property and for recovery of possession. In such matters involving rights over immovable property, especially when a party stands to lose possession based on an ex parte decree, courts are required to act with greater caution and ensure that a party is not



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denied the opportunity to defend the case on merits.

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4. The approach of the trial court, in dismissing the delay condonation application on a purely technical ground, is not in consonance with the well-settled principles of law. Courts are expected to adopt a liberal and justice-oriented approach while dealing with applications for condonation of delay, particularly when there is no indication of deliberate negligence, malafide, or abuse of process. The object of procedural laws is to advance the cause of justice and not to thwart it on mere technicalities.

5. Procedural irregularities or technical lapses should not come in the way of delivering substantial justice. In the present case, the delay of 101 days is neither inordinate nor unexplained, and in the interest of justice, the petitioner ought to have been granted an opportunity to contest the suit on merits, particularly considering the nature of the relief sought in the suit and the potential consequences of the ex parte decree.

6. Every litigant must be given a fair opportunity to contest the case on merits, especially in situations where the party alleges lack of knowledge due to improper or ineffective service. The dismissal of the application, without appreciating the circumstances in their proper perspective, has resulted in the petitioner being denied an opportunity to defend the case. The Supreme Court



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has consistently held that unless gross negligence or want of bona fides is evident, the doors of justice should not be closed to a party merely on the ground of delay.

7. In this connection, it is worthwhile to refer to the observations made by the Hon'ble Supreme Court in *M.K. Prasad v. P. Arumugam* [(2001) 6 SCC 176], wherein the Hon'ble Court held as follows:

“ 10. In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex parte decree as is evident from his application filed under Section 5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex parte decree, the court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the court in this case can be



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compensated by awarding appropriate and exemplary costs. In the interests of justice and under the peculiar circumstances of the case, we set aside the order impugned and condone the delay in filing the application for setting aside ex parte decree. To avoid further delay, we have examined the merits of the main application and feel that sufficient grounds exist for setting aside the ex parte decree as well.”

Emphasis supplied

8. Further, it is relevant to note that the Hon'ble Apex Court, in the case of *Robin Thapa v. Rohit Dora*, reported in (2019) 7 SCC 359, held that litigation should be based on adjudication of the merits of the parties' contentions. Litigation should not be terminated by default, whether on the part of the plaintiff or the defendant. The cause of justice requires that, as far as possible, adjudication be done on merits. Therefore, this Court is inclined to grant one more opportunity to the parties to contest the suit on merits.

9. In the interest of justice, a liberal approach is warranted, especially when denying the opportunity to contest the matter on merits would result in irreparable prejudice to the petitioner. Courts must lean in favor of advancing substantial justice, rather than punishing parties for procedural lapses that have been reasonably explained.



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In the result, the civil revision petition is allowed. the impugned order is set aside. The application in I.A.No.2 of 2022 is allowed and the delay stands condoned. The trial court is directed to take the application filed under Order IX Rule 13 of the Code of Civil Procedure on file, assign a number to the same, and dispose of it on merits, after affording due opportunity to both parties. If the application is allowed, the trial court shall proceed to dispose of the suit in O.S. No. 184 of 2002 on merits, in accordance with law, within a period of three (3) months thereafter.

Index : yes / no
Neutral Citation : yes / no

08..07..2025

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To

*1.The District Munsif cum Judicial Magistrate,
Veppanthattai,
Perambalur District.*



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N.SATHISH KUMAR.J.,

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