



C.R.P.No.4931 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.07.2025

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.4931 of 2024 & CMP.No.10081 of 2025

1.Rajasekar

2.Malar

... Petitioners

Vs.

1.Arjunan

2.Prabalan

3.Yesuraja

4.Raja

5.Raguraman @ Murthi

6.Kumar @ Rajkumar

7.Rani

8.Devi @ Sarasu

9.Chandrakala

10.Muruvammal

11.Rajasekar

12.Ayyanarappan

13.Puthupattan

14.Elaiyamurugan

15.Umaiya

16.Ranganathan

17.Egavendhan

18. Secretary, Arbindo Ashramam

19.Padmavathi

20.Ganapathy

21.Velanganni

22.Dakshanamurthy

23.Loganayaki

24.Perananthan



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25.Thulukkanam

26.Sarasu

... Respondents

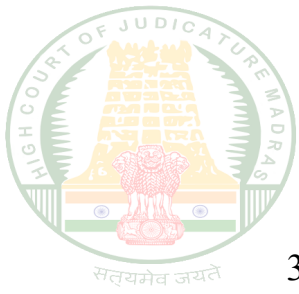
Prayer : Civil Revision Petition filed under Section 115 of Code of Civil Procedure, to set aside the fair and decretal order dated 01.02.2024 made in I.A.No.19 of 2020 in CMA.No.-- of 2020 passed by the learned Principal District Judge, Villupuram.

For Petitioners : Mr.D.Ashok Kumar
For Respondents : No appearance for R2,9,14,15,16 & 21
R1,3,4,5,6,8,10,11,12,
13,17 & 22 (Unserved)
R7,19 & 20 (Died)
Mr.R.Anburaj for R23 to R26
for Mr.F.Wellington
Mr.C.A.Diwakar for R18

ORDER

This civil revision petition has been filed to set aside the fair and decretal order dated 01.02.2024 made in I.A.No.19 of 2020 in CMA.No.-- of 2020 on the file of the learned Principal District Judge, Villupuram.

2. The petitioners are the defendants 21 and 22 in the suit in O.S.No.62 of 2015 on the file of the Additional Sub Judge, Tindivanam. The respondents 23 to 26 are the plaintiffs and other respondents are the remaining defendants in the above suit.



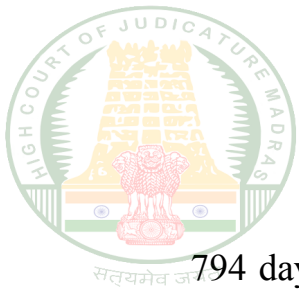
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3. Brief background in filing of this revision are as follows:

3.a. The respondents 23 to 26/plaintiffs have filed a suit in O.S.No.62 of 2015 for partition in respect of the schedule A, B & C and to allot 1/3rd share to the plaintiffs and declare the sale deeds executed in favour of the defendants in respect of schedule A, B & C as null and void and for costs. After trial, the suit was decreed vide decree and judgment dated 29.04.2016. The petitioners herein have filed an application in I.A.No.150 of 2016 in O.S.No.62 of 2015 under Order IX Rule 13 of CPC to set aside the exparte decree passed against them in the above suit on the ground that the petitioners were ill on the date of hearing. The Trial Court vide order dated 26.10.2017 dismissed the application on the ground that the petitioners were not diligent in defending the suit. That apart, the petitioners have not filed the condone delay petition in filing the petition to set aside the exparte decree passed against them and therefore, it cannot be taken as a mere technicality.

3.b. Thereafter, as the petitioners did not file appeal in time as against the application filed under Order IX Rule 13 of CPC, the petitioners filed an application under Section 5 of the Limitation Act to condone the delay of



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794 days in filing the civil miscellaneous appeal. In the said application, it is their contention that they are purchasers and their vendors assured them that they will take suitable steps to safeguard their interest, thus, they did not file appeal in time and delay has occurred. The Appellate Court disbelieved the contention of the revision petitioners and dismissed the application vide impugned order dated 01.02.2024. Challenging the said order, the present revision has been filed.

4. The learned counsel for the petitioner submitted that the petitioners are purchasers and they were under the impression that their vendors would file necessary application before the Court, thus, they did not file appeal in time. The petitioners were not careless and negligent. Further, the petitioners have a good case on merits, if opportunity is given, they will succeed their case. Hence, seeks for liberal approach from this Court.

5. The learned counsel for the respondents 23 to 26/plaintiffs submitted that the very petition was filed by the petitioners under Order IX Rule 13 of CPC was filed with a delay, however, the petitioners did not move an application under Section 5 of the Limitation Act which is a



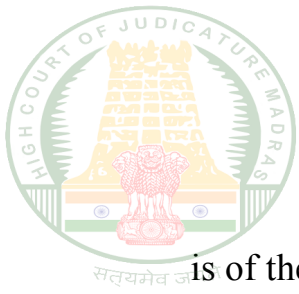
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mandatory requirement when the application under Order IX Rule 13 is filed after a considerable delay and such delay requires explanation. The Trial Court has rightly dismissed the application on the ground that it cannot be construed as mere technicality. Further, the appeal as against the order was also filed with a delay of 794 days and an application under Section 5 of the Limitation Act was also filed to condone the delay, the Appellate Court too has rightly dismissed the application in filing the appeal as there is no merits in the case. Thus, the order of the Court below requires no interference from the hands of this Court and seeks for dismissal of this revision.

6. Heard the learned counsel for the petitioners; the learned counsel for the respective respondents and perused the materials placed on record.

7. At the outset, the very contention raised by the learned counsel for the respondents 23 to 26/plaintiffs that the appellant ought to have moved the application under Section 5 of the Limitation Act which is a mandatory requirement when the application under Order IX Rule 13 of CPC is filed after a considerable delay and such delay requires explanation. This Court



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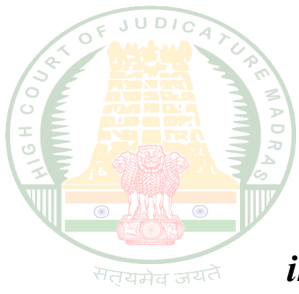
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is of the view that the issue raised by the learned counsel for the plaintiffs is no longer *res integra*.

8. The Hon'ble Supreme Court in the case of Bhagmal vs. Kunwar Lal reported in (2010) 12 SCC 159 has held as follows:

“ 12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay



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in making that application. Procedure is after all handmaid of justice”

9. Following the above dictum, another Division Bench of the Hon'ble Supreme Court in the case of *Dwarika Prasad (D), thr. Lrs vs. Prithvi Raj Singh* reported in 2024 SCC OnLine SC 3828 has held as follows:

“11. The Appellant has relied upon the following judgments in support of his submissions. In Bhagmal v. Kunwar Lal this Court held as follows;

“12. It is to be seen here that the question of delay was completely interlinked with the merits of the matter. The appellant-defendants had clearly pleaded that they did not earlier come to the court on account of the fact that they did not know about the order passed by the court proceeding ex parte and also the ex parte decree which was passed. It was further clearly pleaded that they came to know about the decree when they were served with the execution notice. This was nothing, but a justification made by the appellant-defendants for making Order 9 Rule 13 application at the time when it was actually made. This was also a valid explanation of the delay. The question of filing Order 9 Rule 13 application was, in our opinion, rightly considered by the appellate court on merits and the appellate court was absolutely right in coming to the conclusion that the appellant-defendants were fully justified in filing the application under Order 9 Rule 13 CPC at the time when they actually filed it and the delay in filing the application was also fully explained on account of the fact that they never knew about the decree and the orders starting the ex parte proceedings against them. If this was so, the Court had actually considered the reasons for the delay also. Under such circumstances, the High Court should not



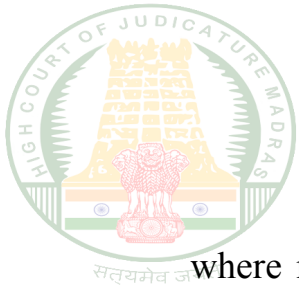
have taken the hypertechnical view that no separate application was filed under Section 5.

13. The application under Order 9 Rule 13 CPC itself had all the ingredients of the application for condonation of delay in making that application. Procedure is after all handmaid of justice.”

12. From the above cases, it is clear that there was no need to file a separate application for condonation of delay in the present case as well. The High Court has erred in taking a hyper technical view and concluding that there was violation of mandatory provision of law. Endorsing such a view would effectively mean ignoring the purpose of judicial procedure. The procedure cannot stand in the way of achieving just and fair outcome. In the present case, the Appellant acted bona fide and diligently. His conduct does not violate any rule of law.”

10. From the above dictum, the law is well settled that Courts should not take the hypertechnical view that no separate application was filed under Section 5 of the Limitation Act when application under Order IX Rule 13 of CPC itself had all the ingredients of the application for condonation of delay in making that application.

11. Coming to the present case, the conduct of the party in the present case though is not appealing to the satisfaction of this Court, the same cannot be a ground to take away the substantive right. Court must remain cautious not to defeat such rights on mere technical grounds, particularly



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where refusal to condone delay may result in miscarriage of justice. It is relevant to note that though the party has not established sufficient cause, while deciding whether there is sufficient cause or not, the Court must also bear in mind the object of doing substantive justice. It is relevant to note that the Hon'ble Apex Court in the case of *Robin Thapa vs. Rohit Dora* reported in (2019) 7 SCC 359 held that a litigation is based on adjudication on the merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits.

12. In the interest of advancing substantial justice, the substantive rights of the parties should not be denied on technical grounds. Procedural lapses alone should not frustrate the ends of justice. Such view of the matter, in order to grant one more opportunity to the petitioners to contest the appeal on merits, this Court is inclined to set aside the impugned order dated 01.02.2024 and the same is hereby set aside. The Appellate Court is directed to number the civil miscellaneous appeal and decide the appeal on its own merits and dispose of the same within a period of three months thereafter.



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N.SATHISH KUMAR, K.

13. In view of the above, this revision stands allowed. No costs.
Consequently, connected miscellaneous petition stands closed.

23.07.2025

dhk
Internet : Yes/No
Index : Yes/No

To

1.The Principal District Judge,
Villupuram

2. The Section Officer,
VR Section,
High Court, Madras.

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