



C.R.P.No.2076 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

C.R.P.No.2076 of 2025
and C.M.P.No.12116 of 2025

1.P.Somasundaram
2.M.Viswanathan
3.A.Karuppasamy
4.P.Govindasamy
5.P.Ramathal

... Petitioners

Vs.

1.A.V.Ramalingam
2.L.Duraisamy
3.R.Balakumar
4.L.Selvaraj

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 06.03.2007 made in O.S.No.851 of 2004 passed by the learned Principal District Judge, Coimbatore.

For Petitioner : Mr.M.Mohamed Riyaz
For R1 to R4 : Notice returned (insufficient address)

ORDER

This revision has been filed under Article 227 of the Constitution of India to set aside the judgment and decree dated 06.03.2007 made in O.S.No.851 of 2004 passed by the learned Principal District Judge, Coimbatore on the ground that the judgment in the present suit is not in



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conformity with Order XX Rules 4 and 5 CPC and the same cannot be construed as a valid judgment.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court. The suit in O.S.No.851 of 2024 has been originally filed by the plaintiffs for specific performance to enforce the sale agreement dated 12.05.1999 entered into between the plaintiffs and the 1st defendant in respect of the suit property. The said suit was originally decreed *ex parte* on 06.03.2007. Thereafter, the plaintiffs have filed execution petition in EP.No.69 of 2017 on the file of the learned Sub Judge, Avinashi and the same is pending. The defendants have filed the present revision to set aside the judgment and decree in the suit on the ground that it is not in conformity with Order XX Rules 4 and 5 CPC.

3. The learned counsel for the petitioner submitted that in a suit for specific performance, though the defendants are set *ex parte*, the basic requirement is to assess the readiness and willingness of the plaintiff, which has not been done by the trial Court. Hence, it is his contention that, when the very judgment and decree is not as per law, the same can be gone into



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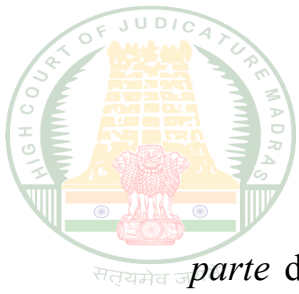
by this Court by exercising powers under Article 227 of the Constitution of India. Such decree can be set aside even in collateral proceedings.

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4. Heard the learned counsel for the petitioner and perused the entire materials available on record.

5. As far as the contention of the learned counsel for the petitioner that the decree passed by the Court is not in conformity with Order XX Rules 4 and 5 CPC is concerned, absolutely there is no dispute with regard to the legal proposition in this regard. Every judgment should contain the reasons and the judgment should fall within the parameters of Order XX Rules 4 and 5 CPC. No doubt, the Courts are bound to give reasons for such decision.

6. However, in the given case, the fact remains that the decree has been passed in the year 2007 and it has reached finality. Therefore, this Court is of the view that, merely because reasons have not been stated and the judgment has been passed without giving proper reasons, such judgment or decree cannot be set aside, that too, after a long delay. Further, when *ex*



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parte decree was passed on 06.03.2007, the defendants had not filed any application to set aside the *ex parte* decree dated 06.03.2007, nor had they challenged that. A judgment not in consonance with Section 2(9) or Order XX of the Code of Civil Procedure, is only an improper judgment, which is not *void ab initio*. It is akin to a judgment given in violation of any provision of law. Such a judgment can be set aside only in Appeal or Review.

7. If a non-speaking *ex parte* judgment is passed, it can be set aside in an Appeal or Review or under Order IX Rule 13 CPC, subject to the law of limitation. It cannot be set aside in a proceeding seeking to condone the delay under Section 5 of the Limitation Act or by invoking Article 227 of the Constitution of India.

8. Judgment which has been obtained by abusing the process of law or in flagrant violation of the principles of natural justice or suits which amount to re-litigation are liable to be set aside/struck off in exercise of powers under Article 227 of the Constitution of India. A non-speaking *ex parte* judgment cannot be set aside by invoking Article 227 of the



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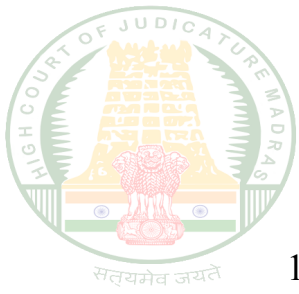
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Constitution of India, as suitable remedies by way of Appeal and Review

are available. All such proceedings are subject to the law of limitation.

Even if the said *ex parte* judgment is non-speaking, its correctness can be assailed only in an Appeal or Review or by seeking to set it aside under Order IX Rule 13 CPC. If such non-speaking *ex parte* judgments are allowed to be set aside by invoking Article 227 of the Constitution and that too, after several years, it will open the Pandora's Box and lead to a spike in litigation.

9. In the given case, though reasons have not been properly given by the trial Court, the parties are always bound by the decree. Having remained silent all these years, now, a revision is filed under Article 227 of the Constitution of India to set aside the judgment in the suit on the ground that no reasons are recorded in the judgment and that the judgment is not in conformity with Order XX Rules 4 and 5 CPC, particularly after this length of time when the judgment has been acted upon by filing the execution petition. Further, the decree has not been challenged all these years, therefore, to set aside such decree after long delay, this Court cannot exercise its power under Article 227 of the Constitution.



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10. In this regard, this Court in the case of R.Rasappan vs. D.Rajalakshmi (Died) and others reported in 2025 (4) CTC 337 has held as follows:

“ 19.If a non-speaking ex parte judgment is passed, it can be set aside in an Appeal or Review or under Order IX Rule 13 CPC, subject to the law of limitation. It cannot be set aside in a proceeding seeking to condone the delay under Section 5 of the Limitation Act or by invoking Article 227 of the Constitution of India.

20.Judgment which has been obtained by abusing the process of law or in flagrant violation of the principles of natural justice or suits which amount to re-litigation are liable to be set aside/struck off in exercise of powers under Article 227 of the Constitution of India.

21.A non-speaking ex parte judgment cannot be set aside by invoking Article 227 of the Constitution of India, as suitable remedies by way of Appeal and Review are available. All such proceedings are subject to the law of limitation. Even if the said ex parte judgment is non-speaking, its correctness can be assailed only in an Appeal or Review or by seeking to set it aside under Order IX Rule 13 CPC.

22.If such non-speaking ex parte judgments are allowed to be set aside by invoking Article 227 of the Constitution and that too, after several years, it will open the Pandora's Box and lead to a spike in litigation.”

11. In view of the above discussion, this revision stand dismissed.

No costs. Consequently, connected miscellaneous petition is closed.

23.07.2025

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1.The Principal District Judge
Coimbatore

2.The Sub-Judge,
Avinashi.

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



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N. SATHISH KUMAR, J.

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