



A No. 2295 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 27.11.2025	Pronounced on 11.12.2025
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THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

**A No. 2295 of 2025 in
C.S(COMM DIV) No. 307 of 2023**

P.K.Ram Mohan
Proprietor, Kalpataru Pictures
No.24, Flat No.F1, AVM Street
Saligramam, Chennai 600 093.

Applicant(s)

Vs

1. M.Gopalakrishnan
Proprietor, MVM Traders
No.18, 4th Cross Street, Trustpuram,
Kodambakkam, Chennai

2.Qube Cinema Technologies Private Limited
Rep. by its Managing Director
No.42, Dr. Ranga Road,
Mylapore, Chennai 600 004

3.Sun TV Network Limited
Represented by its Managing Director,
Murasoli Maran Towers,
73, MRC Nagar Main Road,
MRC Nagar, Chennai - 600 028.

Respondent(s)

PRAYER

Application filed under Order XIV Rule 8 of High Court OS Rules r/w. Order IX Rule 13 and Section 151 of CPC, 1908, to set aside the exparte decree dated



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29/04/2024 made in the above suit in C.S.(Comm.Div) No.307 of 2023.

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For Applicant : Mr.A.Chidambarm

For Respondents: Mr.K.Surendar

ORDER

This application has been filed to set aside the exparte decree dated 29.04.2024 passed in C.S.(Comm.Div) No.307 of 2023.

2.The Applicant is the 1st Defendant in the suit. Pursuant to the direction of this Court, the Applicant gave an undertaking stating that the Suit film will not be released until further orders. When the above Suit was taken up for hearing on 24.04.2024, the Applicant was set exparte for the reasons that though the Applicant was aware of the pendency of the suit from January 2024, he failed to file the written statement.

3.After the Applicant/1st defendant was set exparte, the matter was referred to the learned Master for recording of evidence, while recording evidence PW1 to PW3 were examined and Ex.P.1 to Ex.P.9 were marked on the side of the plaintiff and the Suit was decreed as prayed for on 29.04.2024. Aggrieved against the said judgment, the present application has been filed by the Applicant/1st defendant.



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4. Heard the learned counsel for the Applicant and the learned counsel for the Respondents.

5. Learned counsel appearing for the Applicant submitted that the exparte judgment was passed when thirty days time was available for the Applicant/1st defendant to file an application to set aside the exparte order. He further submitted that when the Applicant/1st defendant was set exparte on 24.04.2024, the Plaintiff was directed to file proof affidavit of all witnesses on or before 25.04.2024, which is the next day of passing of the exparte order and the matter was directed to be listed before the learned Master on 26.04.2024 and after recording of evidence, the matter was listed before this Court and exparte judgment was passed on 29.04.2024, without giving an opportunity to the Applicant to contest the case.

6. The primary contention of the learned counsel for the Applicant is that when thirty days time was available for the Applicant/1st defendant to file an application to set aside the exparte order passed by this Court as contemplated under the CPC, the matter was listed before this Court after recording of evidence and exparte judgment was passed on 29.04.2024.



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7. It is appropriate to look into the submissions made by the learned counsel for the Applicant/1st defendant that no summon was served on the Applicant/1st defendant. However, when the Applicant/1st defendant was appearing through his counsel in the proceedings, the question of service of summons will not arise. The Applicant/1st defendant has a right to file an application to set aside the exparte order within 30 days, from the date on which the applicant was set exparte i.e., 24.04.2024 which is contemplated under the CPC. However, in the present case the Plaintiff was directed to file a proof affidavit on 25.04.2024 and evidence was recorded on 26.04.2024, thereafter exparte judgment was passed on 29.04.2024.

8. The learned counsel for the Applicant is not disputing the fact that the written statement was not filed, however, his main contention is that the judgment was delivered without giving 30 days time for the Applicant to file an application to set aside the exparte order and the same is in contravention of Order IX Rule 13, which is usefully extracted hereunder:

“13. Setting aside decree ex parte against defendant.—In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as



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against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit: Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

1[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

2[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]”

9. In view of the submission made by the learned counsel for the Applicant/1st Defendant that the Applicant was not given an opportunity to contest the case by filing an application to set aside the exparte order, the exparte judgment passed by this Court is hereby set aside and this Application is ordered as prayed for. No costs.

11.12.2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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N.SENTHILKUMAR J.

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To

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**Pre-delivery order made in
A No. 2295 of 2025
in C.S(COMM DIV) No. 307 of 2023**

11.12.2025